Supreme Court Cases

On

Criminal Law

(1950 to April, 1968)

BY

R. P Kathuria
Advocate

With Foreword
By Hon'ble Mr. Justice **D, K. Mahajan**
of
The Punjab & Haryana High Court.

Kathuria Law Bhavan
Civil Line HISSAR,
(Haryana)

Price. 28/-

R. P. KATHURIA
30. 4. 1968

Ist Edition Published

Printed at : New O.K. Press through Gill Composing Agency
639, Churi Walan, Delhi-6.

Preface

This book has been prepared to equip the professional man with all information that could possibly be collected for the interpretation and better understanding of the ambit and scope of the Criminal Law in India as laid down by the Supreme Court.

Decisions of the Supreme Court have been classified under appropriate headings and Sub-headings of the Indian Penal Code, Criminial Procedure Code, Evidence Act, Defence of India Act and other laws along with the extracts from Medical Jurisprudence etc. etc.

Great care has been taken in the notes to bring out the relief, the principle of law and the reasoning on which each principle is enunciated and brief history of the cases has also been given. The case law is Complete, comprehensive and up-to-date.

The Chronological index has been made as comprehensive as possible. I trust this book will prove useful to all those who deal with the administration of law and justice.

I must express my deep sense of gratitude to Mr. justice D.K. Mahajan of the Punjab and Haryana High Court for writing **foreword** to the book.

Dated 23/4/68

R.P. Kathuria

FOREWORD

I have been asked by Shri R.P. Kathuria to write a Foreword to his book entitled 'Supreme Court on Criminal Law.' This work is in the form of a digest of all Supreme Court decisions up to date on Criminal Law. He has put in a good deal of work. The digest will be of great help to the lawyers, the Courts and the litigant public. The arrangement of subjects and headings is methodical. This would facilitate easy reference and save lot of labour His effort is Commendable. I am sure, this work will prove useful to persons engaged in the administration of justice. I hope, the publication will fulfil its purpose.

(Mr. Justice D.K. Mahajan)
Punjab & Haryana High Court

Chandigarh
March 1, 1968

INDEX

CONTENTS

A

D

E

F

G

H

I

Comperative Tables

1951 S.C.	1951 S.C.	1951 Cr.L.J.	1951	SCR	1951 SCT	1951 ILR
A.I.R. 1951 S,C.	124.	52 Cr.L.J.	391	—	98	—
	128.		860	228	182	—
	157.		373	167	208	—
	174.		400	212	233	70
	196.		510	284	269	—
	201.		757	303	291	86
	204.		768	322	296	
	207.		775	312	302	90
	217.		736	344	320	94
	270.		904	451	374	—
	301.		1103	621	453	—
	315.		1237	671	475	605
	316.		1248	676	503	603
	318.		1361	682	478	—
	441.		1491	729	518	640
	467.	1952 Cr. L.J.	54	—	735	—
	481.		75	—	747	—
	484.		60	—	743	—

1952 S.C.

A.I.R. 1952 S C.	1952 Cr L J.	1952 S CR	1952 SCJ	1953 ALJ 94	1952 ILR
14.	522	172	—	94	
27.	1952 Cr.L.J. 321	1952SCR 368	—	1952 ALJ 97	
45.	323	371	26	—	
52.	331	193	32	190	
54.	547	377	46	—	
75.	510	284	55	—	
106.	656	202	11	—	
123.	805	435	168	—	
149.	832	425	137	1953 ALJ 758	
156.	836	418	133	—	
165.	848	567	227	1952ALJ 317	
167.	863	829	230	1952AL 437	
181.	955	612	235	—	
196-	966	497	253	—	
214.	1131	812	284	—	
221.	1147	737	321	—	
235.	1167	710	339	—	
317.	1269	674	503	—	

324.	1503	683	476	—
329.	1373	654	465	—
335.	1406	877	496	—
343. 1953Cr.L.J	129	1953SCR1091	1943SCJ509	—
350.	146	„ „ 756	521	—
354.	154	—	545	—
405.	163	—	559	—

A.I.R. 1953 S.C.	1953 Cr.L.J.	1953 SCR	1953 SCJ	1953 ALJ	1953 ILR
10	180	254	1	..	...
49	501	005	28	.	...
52	508	210	28	. .	. .
63	515	644	56	. .	..
75	519	215	38	...	..
76	521	418	85	..	...
83	525	319	48	.	...
122	662		...	..	...
131	668	546	144	...	..
156	862	589	151	...	...
174	892	973	259	...	...
174	892	973	259	...	...
179	902		229	..	...
185	911	581	225	...	...
244	1094	773	330	...	...
247	1097	...	328	...	...
248	1101	767	320	...	...
274	1105	677	396	...	...
277	1113	652	326	...	...
278	1116	825	355	...	...
282	1127	809	338	...	...
287	1158	661	361	...	...
293	1232	836	405	362	...
318	1241	708	444	...	...
325	1432	730	456	...	...
355	1439		468	...	...
364	1465		532	...	...
368	1459		529	...	...
394	1480	1188	563	...	...
404	1621	...	580	...	...
411	1633	...	...	...	...
415	1751	...	...	...	...

420	1772	...	...	...	...
435	1833	...	...	...	...
436	1837	...	...	...	...
441	1923	...	..	...	...
451	1921	...	433	...	...
459	1925	...	...	...	...
462	1928	...	—	...	...
468	1933	...	...	...	...

1954 S.C.

1954 S.C. 1	1954 Cri. L.J. 225	1954 S.C.R.	1953 S.C.J. 612
4	236		1953 S.C.J. 619
10	238	S.C.R, 1953 1169	
15	230		
20	244		
23	253		
28	257		
30	261		
31	323		
36	331		
39	335		
51	338	1954 S.C.R. 470	
73	351		
173	451	435	1954 S C.J. 90
179	456	454	73
186	456	418	
194	475	330	12
204	580		
229	712	933	
266	724		
271	727		
276	735		
278	738		
279	743		
300	865	1077	428
312	881	976	387
321	886	930	385
322	910	1098	362
335	1051		
359	1002	22	530

362	1012	168	534
375	993	1150	461
397	1019	1144	451
406	1024		
415	1029		600
424	1036		582
436	1155		655
455	1161		649
497	1167		570
462	1313	1133	449
465	1322	824	637
496	1333		547
517	1337		621
557	1410		631
560	1417		630
616	1638		
621	1645		
636	1704		
637	1656		
654	1665		
648	1668		
652	1676		
657	1708		
660	1679		
683	1736		
692	1742		
695	1746		
700	1751		
704	1755		
706	1757		
7110	1793		
714	1796		
715	1954 Cr.L.J. 1727		
720	1802		
724	1806		
726	1808		
752	1822		851

1955 S C.	1955 S C. Cr.L.J	1955 (1) S.C.R.	1955 S.C.J.	1955 A.L.J.
19	133	757	54	90
36	152	697	4	
62	193	(1)SCR 887	150	
70	249	(1)SCR 965	153	87
84	254	(1)SCR 893	25	
104	196	(1)SCR 903	129	
123	215	(1)SCR 613	73	
155	342	(1)SCR 1025	228	
191	374	(1)SCR 1045	163	309
196	526	(1)SCR 1150	283	
213	555	(1)SCR 1098	197	
216	572	(1)SCR 1083	106	
274	721	(1)SCR 1201	241	
280	730	(1)SCR 872	592	
287	857	(1) SCR 1177	233	
309	865	(1)SCR 1302	344	
320	869		—	
322	871		—	
331	873		—	
367	876	(1)SCR 1284	324	
419	1404	(1)SCR 1332	351	429
435	1010	(1)SCR 1444	403	405
439	1014	—		
478	1017	(2)SCR 78	442	550
574	1296	—	—	
583	1297	—	—	
584	1299	—	—	
585	1300	—	—	
631	1408	—	—	802
633	1410	(2)SCR 94	603	
762	1542	—	—	
778	1642	(2)SCR 583	—	
792	1644	(2)SCR 524	—	
801	1647	(2)SCR 570	—	
807	1653	—	—	

AIR	Cr. L.J.	AIR	Cri.L.J.
497	599	623	1009
503	605	637	1014
517	884	645	1023
589	889	648	1026
592	892	688	1e30
594	894	722	1034
612	998	747	1325
614	1000	857	1346
620	1006		

A I.R.1958 S.C.	1958 Cr.L.J.	1948 SCR	1958SCJ	1158ALJ
22	106	552	198	91
56	228	739	343	—
61	232	580	335	—
66	238	428	321	—
97	244	618	266	—
107	254	1037	594	
119	260	422	301	—
121	265	640	280	34 1958ILR
124	265	762	355	58
127	268	768	359	89
141	271	774	297	—
143	273	749	349	—
148	279	999	581	—
152	282	996	425	—
163	283	460	580	849
130	300 1957 SCR	187	—	— 1958ILR
194	303	960	345	—
309	569	—	—	—
350	698	—	668	—
376	701	—	5n2	—
414	809	—	735	452
444	814	—	772	—
465	818	—	772	—
500	976	—	856	608
672	1251	—	918	—
813	1352	—	1257	716
845	1355	—	1199	—
915	1429	—	—	906
935	1432	—	—	906
953	1434	—	—	—
[illegible]	1558	—	—	—

S.C.R. 1315 1960 Cri.L.J. ... ...
124
1335 1959 Cr. L.J. ... ...
1501
1390 1508 1960 S.C.J. 1 947

A.I.R. 1960 S.C	1960 Cr.L.J.	1960 SCR	1960 SCJ	1960 Mad LJ (Criminal)
1	126	648	170	
7	131	461	160	91
29	137			
37	141	654	101	39
41	145	736		
47	150	—	915	35
67	154	646	26	21
82	158	J40	87	32
89	160	735	68	23
93	164	587	31	1
96	168	—	82	28
128	171	935	179	99
133	174	985	1079	
154	177	924	195	
184	282	941	1028	
190	282			
195	283			
210	286	991	521	424
239	289	—	539	428
266	410	(1960)2SCR 39		
283	423			
289	424	—	478	398
360	524	325	349	224
363	527	—	248	194
391	532			
397	539			
400	541			
409	544			
457	654	—	629	448
475	664	—	584	349
483	672			
487	676			
490	679			
500	682			

1961 S C.

A.I.R. 1961 S C.	1961 Cr.L J. (1)	1961 S.C.J	P.L.R	SCA	1961 MLJ (Cri)	BobsLR
1	170	226	63PLR439		146	265
112	173			54		221
175	315					
181	317	375				223
186	319	—		—	—	—
218	322					
264	326	—		—	—	—
293	442					
304	447	291				
307	450	267				
387	566	—		—	—	—
418	570					
448	573					
578	725					
583	730					
586	733					
600	736					
606	740					
673	743					
631	747				284	—
633	749					
674	760					
715	766					
751	773	593				
773	794					
785	857					
803	859					
1395	1961Cr.L.J.(2)571					
1467	573					
1494	696					
1522	1961Cr.L.J.(2)702					
1526	1961Cr.L.J.(2)703					
1527	1961Cr.L.J.(2)705					
1541	1961Cr.L J.(2)711					
1543	1961Cr.L.J.(2)713					
1549	1961Cr.L.J.(2)720					
1589	1961Cr.L.J.(2)728					
1601	1961Cr.L,J.(2)736					

1629 1961Cr.L.J.(2)811
1662 1961Cr.L.J.(2)815
1698 1961Cr.L.J.(2)822
1762 1961Cr.L.J.(2)828
1782 1961Cr.L.J.(2)848
1787 1961Cr.L.J.(2)853
1808 1961Cr L.J.(2)856

1962 S.C.

A.I.R. 1962 S.C.	1962 (1) Cr.L.J	1962 SCJ	SCR	
29	99			
63	106			
130	196			64B6LR74
195	203			
240	207			
253	215	408		
276	217			
316	364	367		
399	473	371		
424	479			
439	479			
496	485			
510	489			
517	497			
574	507			
579	512			
586	518			64BoLR260
605	521			
690	688			
759	770			
911	727			

A.I.R. 1962 S.C.	1962 (2) Cr.L.J.
955	103
1052	215
1089	236
1106	247
1116	241
1121	254
1145	256
1146	258
1153	259

A.I.K.		Cri. L.J.
1154		261
1172		262
1189		273
1195		276
1198		278
1204		284
1206		286
1208		288
1211		290
1239		296
1246		303
1252		404
1506		499
1673		510
1691		636
1821		805

S.C.R (1861)2 S.C.R.

S.C.R.		Cr. L. J. S.C.R.
890	1961(1)	Cri. L.J. 760
971	,,	,, 730

(1061)3 S.C.R

S.C.R.		Cr. L.J.
107	(1961)1	Cr. L.J. 725
120	,,	,, 766
324	,,	,, 747
42s	(1961)2	,, 16
440	(1961)1	,, 736
4J0	,,	,, 749
486	,,	,, 743
495	,,	,, 740
563	1961(2)	,, 24
584	,,	,, 43
492	1962(1)	,, 99
718	1961(2)	,, 31
966	,,	,, 696

(1962)1 S.C.R.

S.C.R.		Cr. L.J.
9	1961(2)	Cr. L.J. 1

S.CC.		Cr. LJ.
33	,,	,, 12]
75	1361(1)	,, 859
129	,,	,, 857
140	1961(2)	,, 302
319	,,	,, 438
326	,,	,, 437
451	,,	,, 571
601	,,	,, 711
662	,,	,, 705
737	,,	,, 573
744	,,	,, 703
776	,,	,, 702
896	,,	,, 729

1962(2) S.C.R.

S.C.R.		Cr. L.J.
36	1961(2)	Cr. L.J. 713
50	,,	,, 811
191	,,	,, 728
116	,,	,, 736
195	,,	,, 828
241	,,	,, 822
254	,,	,, 848
265	1962(1)	,, 507
395	1961(2)	,, 853
487	,,	,, 815

			Cri L.J.
503	1962(2)	,,	303
694	1962(1)	,,	106
775	,,	,,	196
904	,,	,,	207

(1962) S C.R.

S.C R.		Cr. L.J.	
10	1961(2)	Cr. L.J.	856
259	1962(1)	,,	203
328	,,	,,	688
338	,,	,,	217
580	,,	,,	569
590	,,	,,	473
622	,,	,,	215
786	,,	,,	364
869	1962(2)	,,	404

(1962)1 S.C.R.

S.C.R.		Cr. L.J.	
68	1262(1)	Cr. L:J.	364
100	1961(2)	,,	573

			Cri L.J.
119	,,	,,	703
183	,,	,,	822

(1962)1 S.C.R.

S.C.R.		Cr. L.J.	
189	1962(2)	Cr. L.J.	848
223	,,	,,	815
231	,,	,,	828
367	1962(1)	,,	469
371	,,	,,	473
401	1961(2)	,,	713

1962(1) S.C.R.

S.C.R.		Cr. L.J.	
408	1962(1)	,,	215
411	1961(1)	,,	743
423	,,	,,	736
439	,,	,,	859
454	,,	,,	857
456	1961(2)	,,	711
583	1962(1)	,,	507
661	1961(2)	,,	702

(1963) 2 SCJ

1963 (1) Cri L.J. 330	120
(2) Cri L.J. 182	165
1963 (1) Cri L.J. 623	294
621	322
489	327
486	330
88	333
14	406
1963 (2) Cri L.J. 702	422
1963 (1) Cri L.J. 341	428
1963 (2) Cri L.J. 434	559
173	571
186	582
1963 (1) Cri L.J. 617	655
1963 (2) 55	687
341	707
351	718

1963 S.C.

A.I.R. 1963 S.C. 74	1963 Cr. L.J. 70
118	86

134	88
174	100
200	235
255	222
316	261
340	325
416	330
430	335
445	338
447	341
550	486
599	489
601	491
612	495
645	617
665	621
666	623
692	633
728	639
765	797
816	[illegible]

		Cii L
	822	809
	849	814
A.I.R. 1963 S C.		
	1035	1963 (2)Cr. L J, 55
	1039	59
	1074	170
	1088	173
	1094	178
	1113	182
	1116	186
	1120	190
	1198	194
	1295	329
	1313	341

A.I.R.	Cri. LJ.
1317	345
1323	347
1413	351
1430	397
1470	403
1511	408
1521	413
1531	418
1472	434
1577	439
1620	529
1696	534
1850	671

AIR. 1964 S.C	1	1
	28	11
	33	16
	170	126
	173	132
	205	138
	221	140
	244	146
	260	152
	264	156
	269	161
	286	167
	334	257
	349	263 (1)
	358	263 (2)
	381	269
	416	304
	464	310
	492	432
	575	437
	703	549
	725	555
	779	558
	784	560
	828	705
	855	724
	900	727

A.I.R. S.C.	942	1964 (2) Cri L.J.44
	946	57
	1120	217
	1128	222
	1135	229
	1149	234
	1154	249
	1184	344
	1263	350
	1279	354
	1357	359
	1519	461
	1533	465
	1541	468
	1563	472
	1585	481
	1625	590
	1645	598
	1673	606
	1701	609
	1773	737
	1850	744
	1893	1965 (1) Cri.L J. 90
	1897	1965 (1) Cri.L.J. 94

302	197	1614	1217
340	305	1633	1227
356	307	1635	1223
424	311	1676	1347
495	457	1742	1349
523	459	1746	1353
595	465	1762	1357
614	472	1766	148
657	586		
722	597		
740	608		
816	602		
821	605		
849	697		
911	700		
1373	1489		
1775	1491		
1783	1495		
1786	1498		
1820	1500		
1863	1503		
1867	1507		
1874	1509		
1868	1514		
1906	1519		
1910	1521		
1525	1533		
1595	1538		

A.I.R.			Cr. L.J.
1967 SC 68	6(		)1966 BLJR 843
152	9		
179	261		
212	265		
241	279		(1966) 2 SCWR 55
273	282		(1960) 2 SCWR 177
276	285		(1966) 2 SCA 336
349	409		(1966) 2 SCA 346
349	409	(March Part)	(1966) BLJR 920
			(1966) 2 S WR 641
			(1967) SCD 61

A.I.R. 1967 S C. 450	414	
A.I.R. 1967 S.C. 483	520 (April)	1966 2 SA 299
		1967 SCD 84
520	525	
528	528	
553	541	
567	544	
		1967 Ker LT 4
A.I.R. 1967 S.C. 740	1967 Cri. J.	1967 Ker LJ 224
		1967 ISCWR 320
		69 Pun LR 107
A I.R 1967 752	656	1967 All WR (HC) 88
		1967 All Cri. R 79
A.I R 1967 S.C. 776	665	1967 I.S.C.WR 105
778	668	8 Guj LR 140
		1967 I.S C. W. R. 391
A.I.R 1967 S.C. 792	671	69 Pun L.R. 79
		1967 I.S.C. W. R. 310
A.I.R 1967 S.C. 895	828	1967 I.S.C. W. R. 198
167 S.C. 947	832	1967 B.L.J.R. 1
		1967 All WR (H.C.)114
		1967 I.S.C.W.R 307
		1967 All Cri. R 109
		1967 I.S.C.J. 474
		1967 Mad. L. J. 261
A.R. 1967 S.C 1412	19 Cri L.J.	1967 S.C. WR 795
		1967 SCD 687
1424	1215 Oct. Part 1967	25 WR 18
1445	1218 ,,	
1394	1380 ,,	
1507	1390 ,,	
1532	1396 ,,	
1550	1391 ,,	
1590	1401 ,,	
1590	1401 ,,	
1599	1569 ,,	

1606		(1967) 2 S.C.A. 253
1639	1576 ,,	
1616		20 STC 290

1968 A.I.R.

	A.I.R. 1968 S.C. 1		1968 Cri. L.J. 82
	19		86
117	231	43	89
247	236	53	92
	117		97
	147		103
	95		110

A.I.R. 1967 S C. 970—1967 Cr.L.J. 939		1967 CIS (IJ) J
		69 Pun LR 300
		(1967) ISCW 620

1967 S.C. 983—	943	1967 Mah L.J. 312
		1967 MPLJ 312
		1967 All WR (H.C.) 272
		1967 All CriR 197
		69 B.m LR 308
1967 S.C. 986—	947	(1967) ISCWR 330
997—	950	(1967) ISCWR 745
1027—	975	(1967) ISCWR 443
A.I.R. 1967 1143—	1074	(1967) ISCWR 505
		1967 SCD 559
		1267 SCD 559
1156—	1076	(1967) ISCWR 249
		1967 SCD 473
2167—	1081	(1967) ISCWR 465
		1967 SCD 455
1226—	1092	31F J R 373
		(1967) ISCWR 818
		(1967) I bah L 3724
A.I.R. 1967 SC 1298—1967 Cri.L.J. 1194		(1967) ISCWR 638
		1967 Mah LJ 492
		69 Bom LR 459
		(1967) 11 TJ 875
		(1967) ISCA 608
1967 S.C. 1326—	1197	(1967) ISWR 446
		(1967) 2 Anoh LT 38
		1967 All LJ 303
		1967 BLJR 318

1967 All WR
1967 All Cri R 222
1967 Jab LJ 441
1967 SCD 495
1331— 1967 MPLJ 473
1200 1967 Mah LJ 571
(1967)ISWR 513
1335— 1967 SCD 529
1263— 1204 & Guj LR 571
1212 (1967) ISCA 246
(1967) ISCWR 415
1963 SCD 437
1967 Mah LJ 503
1967 MPLJ 471
1967 Mah LJ (Cri) 500
1967 All Cri R 310
1967 All WR (HC) 440

Supreme Court

On

Criminal Law

Up To date

"A"

Abandon

The word 'Abandoned' means 'let loose' in the sense of being 'left unattended' and certainly not 'ownerless'. This is the true interpretation of the word abandoned given in S. 418 (1) of the Delhi Municipal Corporation Act.

Kanwai Singh and others Vs. The Delhi Administration
A.I.R. 1965 S.C. 871 : 1965 (2) Cri. L.J. 1

Abate

(i) Section 431 Cr. P C. provides that every appeal against acquittal and every other appeal under Chapter XXXI except an appeal from sentence of fine shall finally abate on the death of the appellant. The High Court or the Court of Session cannot pass any order in favour of the dead person except in an appeal from a sentence of fine.

State of Kerala Vs. Narayani Amma Kamla Devi
A.I R. 1962 S.C. 1530

(ii) A sentence of fine affects the property. The legal representatives can be said to be interested in the proceedings so the appeal against the sentence of fine does not abate, while appeal against the sentence of imprisonment after the

(*Abate-contd*)
death of the appellant abates. This principle of Sec. 431 Cr. P. C. also applies to appeal under constitution i.e. under Art. 136 or 134.

Bondada Gaja Pathi Rao Vs. State of Andhra Pradesh
A.I.R. 1964 S.C. 1645 : 1964 (2) Cri. L.J. 598

(iii) There is nothing in the criminal Procedure Code which warrants the substitution of one complainant for another. But where the word "substitution" amounts to allowing the mother to act as the complainant in order to continue the prosecution, is permissible u/s 198 Cr.PC. This power is possessed by the Magistrate because of S. 495 of the Cr. P. C. by which courts are empowered (with some exceptions) to authorise the conduct of prosecution by any person.
So the death of the complainant in serious cases like u/s 493 and 496 I.P.C. does not put an end to the Prosecution. Mother of the complainant can be placed as complainant.

Ashwin Nanubhai Vyas Vs. The State of Maharashtra
A.I.R. 1967 S.C. 983, 1967 Cri. L J 943. 1967 Mah L.J. 312, 1967 All Cri. R. 197, 69 Bom. L.R. 308

Abatement Revision

(iv) In the absence of statutory provision of abatement given in S. 431 Cr. P. C. applying to the revision application, the High Court has the power to pass such orders as it may think fit and proper, in exercise of its revisional jurisdiction vested in it by S. 439 of the Code. So the Revision on the death of the applicant does not abate.

Pranab Kumar Mitra Vs. State of West Bengal
A.I.R. 1959 S.C. 144, 1959 Cri. L.J. 256

Abetting

Appellant ordered to B, an-other accused, a member of an unlawful assembly, to set fire to the hut. The setting of the fire by B, was not proved but there is evidence to establish that the offence abetted is committed in consequence of the abetment. Conviction u/s 436 read with 109 Indian Penal Code of the accused charged of abetting the offence is not illegal, although person charged of committing the offence abetted is acquitted.

Gallusah Vs. State of Bihar
A I R. 1958 S.C. 813 : 1958 Cri. L J. 1352

Abetment

(i) When Khular Ram, a person who had the authority to do or not to do a particular act and charged with the offence u/s 161 Indian Penal Code is acquitted on the ground that he had not committed the offence, then, there can be no question of intentionally aiding by any act or omission

(Abetment-cont.)

the commission of that offence. The conviction of the person abeting the offence cannot stand even the acquittal of the person charged with offence is wrong.

Faguna Kanta Nath Vs. The State of Assam
A.I.R. 1959 S C. 673, 1959 Cri. L.J. 917

(ii) If one accused can be tried by the Special Judge for offences u/s 120-B read with 466, 467 and 420 Indian Penal Code, the other accused, who are said to have abetted those offence, can also be tried.

The State of Andhra Pradesh Vs. Kandimalla Subbaiah & another
A.I R. 1961 S.C. 1241

(iii) Conspiracy to commit an offence is itself an offence and a person can be separately charged with respect to such conspiracy. There may be an element of abetment in a conspiracy but conspiracy is some thing more than abetment, Where a number of offences are committed by several persons in persuance of a conspiracy it is usual to charge them with those offences as well as with the offence of conspiracy to commit those offences.

The State of Andhra Pradesh Vs. Kandimalla Subbaiab & another
A.I.R. 1961 S.C. 1241

(iv) It would be impossible to hold that a person, who instigates another to assist a woman following the profession of a prostitute abets him to do an act with intent that she may or with knowledge that she will be seduced to illicit inter-course.

Note:—Appeal was accepted.

Ramesh Vs The State of Maharashtra
A I.R 1962 S C. 1908

(v) It cannot be held in law that a person cannot ever be convicted of abetting a certain offence when the person alleged to have committed that offence in consequence of the abetment has been acquitted.

The offence of abetment is complete when the alleged abettor has instigated another or engaged with another in a conspiracy to commit the offence. It is not necessary for the offence of abetment that the act abetted must be committed.

Jamuna Singh Vs. the State of Bihar
A.I R. 1967. S.C. 553 : 1967 Cri L.J. 541

Abduction and right of private defence

(i) Clause fifth of Sec. 100 of IPC will have no application unless an offence under

(Abduction and right of private defence-contd)

section 362 to 369 of IPC is likely to be committed. Section 100 gives an extented right of private defence where an assault is an offence against human body and that assault should be with intention of abducting. Therefore, when appellant's sister was being abducted, even though by her husband, when there was an assault on her and was being compelled by force to go away from her father's place, the appellant had the right of the private defence of the body of his sister against an assault with intention of abduction by force. This right would extend to the causing of death.

Vishwanath Vs The State of Uttar Pradesh
A.I.R. 1960 S.C. 67 : 1960 Cri. L J. 154

(ii) No accused can be convicted on the charge of abducting a girl for the purpose of illict inter-course in the absence of that charge and further when no question was put to the accused u/s 342 Cr. P. C. in regard to the accused giving of the sweets to the girl or otherwise compelling or inducing her to leave her father's place. So the conviction u/s 366 I.P. C. is bad in law.

A.I R. 1955 S.C. 574 : 1955 Cri. L. J. 1296

Abduction pure and simple is not an offence under the Penal Code. Only abduction with certain intent mentioned in the code, is punishable with an offence.

Viswanath Vs, The State of Uttar Pradesh
A.I.R. 1960 S. C. 67 : 1960 Cri L.J. 154

Absconding

The mere absconding, however, may lend weight to the other evidence establishing the guilt of the accused, but by itself, is hardly any evidence of guilt.

Raghav Prapanna Tripathi Vs. State of Uttar Pradesh
A.I.R. 1663 S.C.74, 1963 Cri. L.J, 70

Absence of complainant

Ss. 247 and 259 are not applicable in the cases which are exclusively triable by the Court of Sessions during inquiry before the Magistrate.

Note.—S. 247 or 259 Cr. P. C. does not apply to the cases exclusively triable by the Court of Sessions during commitment proceedings.

Ashwin Nanubhai Vyas Vs. The State of Maharashtra
A.I.R. 1967 S.C. 983, 1957 Cri L J. 943, 1967 MPLJ 312: 1967 All WR (Ic) 272

Abstraction

(i) The existence of the unauthorised means for abstraction is prima facie evidence of dishonest abstraction by some person. To bring home the charge under Section 39 of the Electricity Act, the prosecution must also prove that the consumer is responsible for the tampering. The prosecution must prove it beyond reasonable doubt

I. Jagannath Singh Vs. B S. Ramaswamy
A I.R. 1966 S.C. 849 . 1966 Cri. L J. 617

(ii) The installation of the meter in a dark corner does not show any guilty conscience of the appellant. In fact when the meter was installed by the electric company it could have chosen a better lighted place. The presence of the obstruction in the passage is not sufficient to show that the servants of the company could not have reached the meter for the purpose of inspection and checking whenever they chose to do so. There appears to be no statement on the record to the effect that at any time such servants were thwarted in their attempt to check the meter by the appellant or his representatives, or on account of the alleged obstruction in the passage.
So the Conviction cannot be maintained.

Jagannath Singh Vs. H. Krishna Murthy
A.I.R. 1967 S.C. 947, 1967 Cri. L.J. 832, (1967) I SCJ 474

(iii) The mere fact that the consumption of energy was much less prior to that day does not necessarily lead to the inference that there was dishonest abstraction of electricity energy. The prosecution must prove any perfected artificial means in existence as to raise the presumption of dishonest abstraction u/s 39 of the Electricity Act (1910).

Note —The conviction u/s 39 was set aside.

Ram Chandra Prasad Vs. The State of Bihar
A I.R. 1967 S.C.349, 1967 Cri. L.J. 409

Abuse

Abuse means misuse i.e. using his position for something for which it is not intended. The abuse may be by corrupt or illegal means or otherwise than those means.

M. Narayana Nambia Vs. State of Kerala
A.I.R. 1963 S.C 1116 : 1963 (2) Cri L J. 186

Accessible Place

The fact of recovery does not conclusively prove that the accused was in possession of these articles when the fields, from where the recovery was made, was an open one and accessible to all and sundry. This fact of re-

(Accessible Place-contd)

covery is compatible with the circumstance of some body else having placed the articles there. From the bare fact that the accused was residing in the complainant's village. his knowledge that the ornaments were stolen property, cannot ligitimately be concluded. It was thus held that the prosecution has failed to prove that the stolen property was in the possession of the accused and that he had knowledge that they were stolen articles.

Trimbak Vs. State of Madhya Pradesh
A.I R. 1954 S.C. 39 1954 Cri L J. 335

Accessible

A suggestion of plantation of drums of rectified spirit and other prohibited articles by the police is of little value when it was not said that the godown from where those articles were recovered was accessible to several other persons and police might have kept the spirit there, and when the appellant was in possession of the godown and a servant working under the appellant was inside the godown. The Magistrate was justified in drawing the inference that these articles were in possession of the appellant

Vijendra jit Ayodhya Prasad Goel Vs. State of Bombay
A.I.R. 1953 S.C. 247 1953 Cri L J. 1097

Accomplice.

An accomplice must be a willing party to the giving of the bribe. The evidence of an accomplice is admissible in Law but the same must be corroborated. The judge must warn the jury of the danger of convicting a prisoner on the uncorroborated testimony of an accomplice.

State of Bihar Vs Baswan Singh
A I R. 1958 S C. 500 : 1958 Cri. L J. 976

(ii) The crucial fact on which the charge u/s 467 based is deposed to only by accomplice wetnesses and their statements are not corrobotated by any other statement on the record. Therefore, the finding of the High Court rested on this evidence uncorroborated by any other evidence is against law.

Note :—The conviction was set aside.

R R. Chari Vs State of Utter Pradesh
A.I R. 1962 S C. 1573—1962 (2) Cri. L J. 510

(iii) It is difficult to accept the plea that if a witness is shown to be the relative of the deceased and it is also shown that he shared the hostility of the victim towards the assailant, his evidence can never be accepted unless it is corroborated on material particulars It cannot be held that such witnesses are not better than accomplices and their evidence as a matter of Law, must receive corroboration before it is accepted.

Darya Singh and others Vs State of Punjab
A.I.R. 1965 S C. 328 (March Part), 1965 (1) Cri. L J. 350

(*Accomplice-contd*)

(iv) A witness merely accompanying the accused party for doing their menial work does not satisfy the requirements of an accomplice.

Vemireddy Satya narayan Reddy and others Vs State of Hyderabad
A.I R. 1956 S.C. 379—1956 Cri. L.J. 777

(v) A man witnessing the occurance but not divulging the same to any body for two, three days. The evidence of such person should be scanned with much caution and the court must be fully satisfied that he is a witness of truth It would be unsafe to hang four people on his sole testamony unless corrrobo-rated.

Note:—In this case the evidence of such witness was believed as was materially corroborated and was held not to be an accomplice.

A.I.R. 1956 S.C. 379 :1956 Cri. L.J. 777

(vi) A victim of outrageous act is, generally speaking, not an accomplice though the rule of prudence requires that the evidence of the prosecutrix should be corroborated. The nature of the corroborative evidence should be such as to lend assurance that the evidence can be safely acted upon.

Note,—In this case conviction was upheld.

Sidheswar Ganguly Vs State of West Bengal.
A.I.R. 1958 S.C. 143 : 1958 Cri L.J. 273

(vii) A woman who has been raped is not an accomplice but her evidence should be corroborated. It should be corroborated by independednt evidence and independent confirmation of every material circumstance. The independent evidence must not only make it safe to believe that the crime was committed but must in some way reasonably connect or intend to connect the accused with the crime. The corroboration need not be by the direct evidence. It is sufficient if the circumstantial evidence connect the accused with the crime.

Note:—Corroboration was found in the facts of the case and the appeal was dismissed.

Ramesywar Vs State of Rajasthan
A.I R. 1952 S C. 54 : 1952 Cri. L.J. 547

(viii) The tender years of the child, coupled with other circumstances appearing in the case, such as its demeanour, unlikelihood of tutoring and so forth, may render corroboration unnecessary but that is a question of fact in every case. Moreover, a raped child is not an accomplice.

Rameshwar Vs State of Rajisthan ; 1952 Cri. L.J. 547
A I R. 1952 S C.54 : 9152 Cri. L J. 547

(ix) A Co-accused who confesses is naturally an accomplice and his testimony must be corroborated.

Kashmira Singh Vs State of Madhya Pradesh
A.I.R. 1952 S.C. 159

Accused

(i) An accused person does not come into picture at all time till process is issued but he is not precluded from being present himself or through counsel when an enquiry is held by a Magistrate but he has no right to take part in proceedings nor the magistrate can permit him to do so. No question to witness at the instance of **the would be accused** can be put.

Chnadro Deo Singh Vs Prakash Chand Bose
A.I.R. 1963 S C. 1430 : 1963 (2) Cri L J. 397

(ii) Appellant himself went to the Police station and lodged the first information report. Later on the appellant who was a complainant was arrested and made confessional statement. The first information report is not a confession of the appellant but is an admission by the accused of certain facts which have a bearing on the question of murder The admissions of the accused can be proved against him.

Faddi Vs State of Madhya Pradesh
A I.R. 1964 S.C. 1850 : 1964 (2) Cri. L.J. 744

Accused Privilege

The magistrate did not afford the appellant an opportunity of being represented by the counsel though he is given that right by S. 340 (1) Criminal Procedure Code. On the facts of the case it has been held that the right conferred by section 340 (1) of Cr. P.C. does not extend to a right in an accused person to be provided with a lawyer by the state or by the police or by the Magistrate. That is a privileges given to him and it is his duty to ask for a lawyer if he wants to engage himself or let his relation to engage one for him. The only duty cast on the magistrate is to afford him the necessary opportunity

Tara Singh Vs The State
A I.R. 1951 S.C. 441 · 1951 Cri. L.J 1491

Accused Statement,

Section 162 of Criminal Procedure Code renders the statement made by the accused to the police officer during the course of investigation in-admissible. But the statement made before the witness other than police officers is admissible. So statement made to a person assisting the police during an investigation can not be treated as a statement made to the police or to the magistrate as such excluded by S. 162 or 164 of Criminal Procedure Code.

Rao Shiv Bahadur Singh Vs State V. Pradesh
A I R. 1954 S C. 322 : 1954 Cri.L J. 910

Acknowledgement·

The existence of acknowledgement in respect of three letters in post office would only raise a presumption that those articles were delivered to the addressees. But this presumption can be rebutted by evidence of addressees that those articles were not received by them.

Radha Krishan Vs State of Uttar Pradesh
A.I.R. 1963 S.C 822 1963 (1) Cri.L.J. 809

Acquittal.

(i) Presumption of innocence of the accused person is further reinforced by his acquittal by the trial court and the view of the trial judges as to the credibility of the witnesses must be given proper weight and consideration; There must be compelling and substantial reason for the appellate court to come to a conclusion different from that of a trial judge.

Balbir Singh Vs State of Punjab
A.I R 1957 S.C. 216 : 1957 Cri. L.J. 481

(ii) The accused appellant was charged and tried u/s 302 Indian Penal Code but by the trial court the accused was convicted u/s 304 Part 1. The High Court in State appeal reversed the finding and convicted the appellant of an offence U/s 302 Indian Penal Code. The appellant is entitled to a certificate under article 134 (lA) of the constitution as a matter of right as the word acquittal occuring in article 134 does not mean that the trial must have ended in a complete acquittal but would also include the case where an accused has been acquitted of the charge of murder and has been convicted of a lesser offence.

Tara Chand Vs. The State of Maharashtra
A.I.R. 1962 S.C. 130 : 1962 (1) Cri.L J. 196

(iii) The accused was tried on charges of murder and robbery and the Session Judge acquitted the accused of those charges and convicted only of an offence u/s 411 I.P.C. Accused appealed to the High Court while the state government did not appeal against the acquittal of the accused on the charges of murder and robbery. The High court ordered for the retrial of the case u/s 302 and 392 of the Penal Code. Held the order of the retrial on the charges on which the accused was acquitted could not be passed. In short, an accused is charged with several offences but convicted under the minor offences. **Appeal against conviction, the appellate court cannot order retrial on the charges on which the accused has been acquitted when there is no appeal by the state government against the acquittal**

The State of Andhra Pradesh Vs The adi Narayana
A I R. 1962 Supreme Court P.240 : 1962 (1) Cri.L J. 207

(iv) If out of the six persons charged u/s 149 of the Penal Code alongwith other offences two persons are acquitted, the remaining four may not be convicted because the essential requirement of an unlawful assembly might be lacking.
Note :—Evidence otherwise was satisfactory against the appellant so the appeal was dismissed.

Sunder Singh Vs. The State of Punjab
A.I R. 1962 S C. 1211 : 1962 (2) Cri.L J. 290

constituent to the Bombay merchant and there is no privity of contract as between the upcountry constituent and the Bombay merchant. The pucca adatia is entitled to substitute his own goods towards the contract made for the principal and buy the principal's goods on his personal accounts. In other words, the pucca adatia is not the agent of his constituent but he is acting as a principal as regards his constituent and not as disinterested middleman to bring two principals together.

Shivenarayan Kabra Vs The State of Madras
A.I.R. 1967 S.C. 986 July Part 1967 Cri. L J. 947 (1967) ISCWR 303

Additional Judge

An Additional Judge is not a judge of Co-ordinate judicial authority with the District Judge. Therefore, the court of Additional Judge is not a Division Court of the court of the District Judge but a separate and distinct court of its own. Additional Judge is not an Appellate court for the purposes of 476B Cr. P.C.

Kuldip Singh Vs The State of Pb. and others
A.I.R. 1956 S.C. 391 : 1956 Cri L.J. 781

Additional District Magistrate

(i) No officer other than the District Magistrate of disrrict can pass an order of detention under rule 30 (1) (b) of Defence of India rules. **State Govt. cannot deligate the power under the Defence of India Act** to detain, to any officer who is lower in rank than the district Magistrate, **Additional District Magistrate is below the rank of district Magistrate** and cannot be said to be of the same rank as the district Magistrate. So the order of detention passed by the Additional District Magistrate is against law.

Ajaib Singh Vs Gurbachan Singh and Others
A.I.R. 1965 S C. 1619

(ii) Even if the Additional District Magistrate is invested with all the powers of District Magistrate under the Criminal Procedure Code or under any other law for the time being in force, he is still below the District Magistrate for certain purposes mentioned in S. 10 (3) of the code of criminal procedure.

A.I.R. 1965 S.C. 1619

Admissible

(i) The statement of the accused before the police sub inspector that he had burried the ear-rings is admissible u/s 27 of the Evidence Act and the Courts are right in holding that the recovery is a circumstance which connected the accused with the crime.

Balbir Singh Vs State of Pb.
A.I.R. 1957 S.C. 216 : 1957 Cri. L J. 481

(ii) Evidence of the draftsman who prepared the map of the place of occurrence

(*Admissible-contd*

after ascertaining from the witnesses where exactly the assailants and the victim stood at the time of the commission of the offence. The Draftsman measured the distances and put down on the plan, his evidence is legal and admissible

Santa Singh Vs State of Punjab
A I R. 1956 S.C. 526 : 1956 Cri. L.J. 930

(iii) The witnesses told the Head Constable and Inspector the place of occurrence and the map prepared by Police Officers is not admissible under section 162 Criminal Procedure Code while there is no bar to the evidence given by the drafts-man.

Santa Singh Vs The State of Punjab
A.I.R. 1956 S.C. 526 . 1956 Cri. L.J. 930

(iv) A prosecution witness examined earlier does not state that he informed the witness B examined later, The statement of B about the information given to him by the witness examined earlier can not be used unless the very person to whom it is ascribed must be given opportunity to explain it. In the absence of such opportunity statement or information alleged to be made to witness B is inadmissible in evidence.

Awadh Behari Sharma Vs State of Madhya Pradesh
A.I-R. 1956 S.C. 738 . 1956 Cri. L.J. 1372

(v) A statement of a witness not recorded in compliance with S.164 Criminanl Proccdure Code will not go in as evidence under S. 9 of the evidence act.

Deep Chand Vs State of Rajasthan
A.I R. 1961 S.C. 1527 : 1961 (2) Cri. L.J. 705

Admissible

(vi) A Magistrate, if, speaks to facts which establish the identity of any thing, the said facts would be relevant within the meaning of S. 9 of the Evidence Act ; but if the Magistrate seeks to prove statements of a person not recorded in compliance with the mandatory provisions of S. 164 of the Criminal Procedure, such part of the evidence, though it may be relevant within the meaning of S. 9 of the Evidence Act, will have to be excluded.

Deep Chand Vs The State of Rajasthan
A.I R. 1961 S.C. 1527 : 1961 (2) Cri. L J. 705

(vii) The Statement of the accused that the axe recovered had been used to commit murder or the statement that the blood stained shirt and dhoti are his, are inadmissible in evidence.

Prabhoo Vs. State of Uttar Pradesh
A.I.R. 1963 S.C. 1113 : 1963 (2) Cri.L.J. 182

(*Admissible-contd*)

(viii) A statement or a confession made in the course of investigation to a magistrate (2nd Class) not belonging to one of the classes mentioned in S.164 of Criminal Procedure Code. His oral evidence to prove the statement or confession is inadmissible. Even S. 533 of the code would not make such oral evidence admissible.

State of Uttar Pradesh Vs. Singhara Singh and others
A.I.R. 1964 S.C. 358 : 1964 Cri.L J. 263 (2)

(ix) Report of the Doctor not on the file Reference to it was made in the affidavits of a witness and Sub Inspector which were both hearsay, is not admissible under the Evidence Act in proof of the contents of documents.

Mohd Ikram Hussain Vs. The State of Uttar Pradesh
A.I R. 1964 S.C. 1625 : 1964 (2) *Cri.L.J. 590*

(x) First information report lodged by the appellant himself is not a confession of the appellant. It is not a statement made to a police officer during the course of investigation The report is an admission by the accused of certain facts. Admissions are admissible in evidence u/s 21 of the evidence act and can be proved as against a person who makes them.

Faddi Vs. State of MadhayaPradesh
A.I.R. 1964 S.C. 1850 : 1964 (2) Cri.L.J. 744

(xi) A custom officer is not a police officer. statement made to him is not in-admissible u/s 25 of Evidence Act. S. 24 would however apply, for custom authorities must be taken to be persons in authority and the statement made before them would be in admissible in trial if it is proved that they were caused by inducement, threat or promise.

Note :—No inducement, threat or promise was found in this case and the statements made before the custom officer were admitted in the evidence)

Soni Vallabhdas Liladhar and others Vs. The Asst. Collector of Customs Jamnagar
A.I.R. 1965 S.C. 481 : 1965 (1) Cri.L J. 490

(xii) Mere conferment of powers of investigation into criminal offences under Section 9 of the Sea Customs Act does not make the Central Excise Officer a police officer even in the broader view. Otherwise any person entrusted with investigation under Section 202 of the Cr. P.C would become a police officer. The statement made by the appellant to the Deputy Superintendent of Customs and Excise would not be hit by Section 25 of the Evidence Act and would be admissible in evidence unless the appellant can take advantage of Section 24 of the Evidence Act. As to that it was urged on behalf of the appellant in the High Court that the confessional statement was obtained by threat. This was not accepted by the High Court and, therefore, Section 24

(*Admissible-contd*)

of the Evidence Act has no application in the present case.

Note ;—In this case the contention of the appellant that the statement was obtained by threat, was ruled out in the High Court.

Badaku Joti Svant Vs. State of Mysore
A.I R. 1966 S.C. 1746 : 1966 Cri L J. 1353

(xiii) Under S. 35 of the Evidence Act.
Documents admissible are not only public documents, but also records of official acts. There can be no doubt that these War Diaries, which have been used as evidence, were records of official acts and in fact, there is specific evidence of witnesses that these were required to be maintained under the rules applicable to the units of the army which maintained these diaries.

Bakhshish Singh Dhaliwal Vs. The State of Punjab.
A.I.R. 1967 S.C. 752 (1967 Cri. L.J. 656, 69 Pb. L R 107

Admissibility

(i) The recording of a joint statement of the examination of witnesses by the investigating officer is in contravention of Section 161 (3) Cr.P.C. and must be disapproved but that would not render their testimony inadmissible.

Tilkeshwar Singh and others Vs. The State of Bihar
A.I R. 1956 S.C. 238 : 1956 Cri. L J. 441

(ii) If the panch witnesses explain the purpose of the parade to the identifying witnesses and the process of identification was carried out under their exclusive direction and supervision, the statements involved in the process of identification would be statements by the identifier to the panch witnesses. This process would be admissible in law.

Ram Kishan Mithanlal Sharma and others Vs State of Bombay
A I.R. 1955 S.C. 104. 1955 Cri. L.J. 196

(**Note** :—In this case police officers were present throughout the process of identification and the panch witnesses were there only to meet the requirements of law. Identification held to be inadmissible.

Admissibility of incomplete dying declaration

(iii) The dying declaration, though incomplete otherwise was complete so far as the accused having shot the deceased was concerned, could certainly be relied upon by the prosecution.

Abdul Sattar Vs. The State of Mysore
A.I R. 1956 S.C. 168 : 1956 Cri. L.J 334

(iv) A statement made by the first appellant B that he had been sent by the second appellant with the money to be offered by way of bribe to a police officer was admissible against him. The object of the conspiracy was the

hushing up of the criminal case against the second appellant, by bribing the public servant, who was incharge of the investigation of the case. The statement of the first appellant was made in the course of conspiracy so is admissible and it can not be said that the statement was made after the object of the conspiracy had already been accomplished.

Badri Rai and another Vs State of Bihar
A.I R 1958 S.C. 953 : 1958 Cri. L J. 1434

(v) The appellant on being interrogated about the stolen property, produced a box from a pond and handed it over to the Sub Inspector of Police. He also produced a key from out of bunch of keys, which fitted the lock. Held that evidence in regard to discovery to key and box was admissible in evidence u/s 27 of Evidence Act. The handing over of the key is not confessional statement.

Hoshiar Singh and another Vs. Gurbachan Singh and others
A.I.R. 1962 S C. 1089 : 1962 (2) Cri. L.J. 236

Admissibility-dying declaration

(vi) Deceased had spoken one complete sentence "Sir, this day 24th Jan. 1960, in the noon at 12.30, Munippan son of Kolagondan of Kannan Kurochi stabbed me in my body with knife" and then suddenly died. The Sub-Inspector took the thumb impression after death. Held dying declaration to the extent of accusation was complete and there is nothing to show that there was anything further to add. The dying declaration was admissible in evidence even though the thumb impression was taken after death and further it is admissible even without any corroboration.

Muniappan Vs. The State of Madras
A I R. 1962 S.C. 1252 : 1962 (2) Cri. L.J 404

(vii) It is well settled that proceedings of the Legislature cannot be called in aid for construing a section. The statement of objects and reasons is not admissible in evidence for construing the statute.

Munippan Vs. State of Madras
A.I.R 1962 S.C. 1781

Admission

(i) **Correspondence of the accused** ,if true, are revealing, but are of course evidence only against themselves.

Sardul Singh Caveeshar Vs The State of Bombay
A.I.R. 1957 S.C. 747 1957 Cri. L J. 1325

(ii) An admission by a witness that a statement of his was recorded under section 164 Criminal Procedure Code and that what he had stated there was true

(*Admission-contd*)

would not make the entire statement admissible, much less that any part of it could be used as substantive evidence in the case.

State of Delhi Vs. Shri Ram Lohia
A.I.R. 1960 S C. 490 1960 : Cri. L J. 679

(iii) Appellate conrt has no power to direct that the appeal shall be heard only on point of sentence. This order is illegal. The appellant. as of right, can insist that since the appeal had not been summarily dismissed, his appeal should be heard on merits as well. Even if appeal was admitted on the mere question of sentence, appellant can claim to be heard on merits

Rabarichela Jadav Vs. State of Bombay
A.I R. 1960 S.C. 748 : 1960 Cri. L J. 1156

(iv) First information report lodged by the appellant himself. The report is not a confession of the appellant. **It is not a statement made to a police officer during the course of investigation.** The report is an admission by the accused of certain facts. Admissions are admissible in evidence u/s 21 of the evidence act and can be proved as against a person who makes them.

Faddi Vs. State of Madhya Pradesh
A.I.R 1964 S.C. 1850 : 1964 (2) Cri. L.J. 744

(v) Statements made by the appellant and signed by his lawyer before the custom authorities can be proved without examining the lawyer when it has been admitted by the accused appellant during trial. The statements must be held to be proved by the admission.

Soni Vallabhdas Liladhar and another Vs The Asst. Collector
A I.R. 1965 S.C. 481 : 1965 (1) Cri L.J. 490

(vi) Statement admitting the second marriage by the appellant is certainly not evidence of the lawful marriage,

Kanwal Ram Vs. The Himachal Pradesh
A.I R. 1966 S.C. 614 : 1966 Cri L J. 472

(vii) The requirements of S. 243 of the Criminal procedure Code are mandatory in character and a violation of these provisions vitiates the trial and renders the conviction legally invalid. The requirement of the section is not a mere empty formality but is a matter of substance intended to secure proper administration, of justice. It is important that the terms of the section are strictly complied with because the right of appeal of the accused depends upon the circumstance whether he pleaded guilty or not and it is for this reason that the legislature requires that the exact words used by the accused in his plea of guilty should, as nearly as possible, be recorded in his own language in order to prevent any mistake or misapprehension.

Note :—Appeal of the accused was allowed.

Mahant Kaushalya Das Vs The State of Madras
A.I.R. 1966 S.C 22 (Para 6) : 1966 Cri. L.J. 66

Admission Card

Admission Card enabling the accused to sit for the M A. Examination has pecuniary value. This card is property within the purview of S. 42o Penal Code.

Abhayan and Mishra Vs State of Bihar
A.I.R. 1961 S.C. 1698 : 1961 (2) Cri. L.J. 829

Admonition

The words "any offence under the Indian Penal Code" cannot be read ejusdem geneils with the offences such as theft, theft in building dishonest misappropriation and cheating which are offences connected with property. This clause stands by itself and indicates that all offences punishable with not more than two year's imprisonment are also capable of being dealt with under S. 562 (1-A), Offences against property are all incuded in Ch. 17 of the Indian Penal Code and if it was desired to limit the operation of S. 562 (1-A) to offences against property, it would have been the easiest thing to have mentioned the seventeenth Chapter of the Code. So the sentence of admonition U/s 561 (1-A) can be passed even in the offence of wrongful confinement i.e 342 I.P.C

A karapu Kattal Millu Vs Puran Chander Rao & State
A.I.R. 1967 S.C. 1363 (September Part). 1967 Cri. L.J. 1212

Adultry

The Sexual relationship with a lady will not prove the marriage

Kanwal Ram Vs The Himachal Pradesh
A.I.R. 1966 S.C. 614 : 1966 Cri. L.J. 472

Adulteration

Respondent accused cannot asserts any fundamental right under Art. 19 (1) of the constitution to carry out business in adulterated food stuffs.

The State af Utter Pradesh Vs Kartar Singh
A.I R. 1964 S.C. 1135 . 1964 (2) Cri. L J. 229

Adverse Inference

(i) Appellants total denial of certain proved facts i.e. that he was ever in the service of the deceased and his pointing out the clothes of the deceased, would justify the court in drawing an adverse inference against the appellant.

Pershadi Vs State of Uttar Pradesh
A.I.R. 1957 S.C. 211 : 1957 Cri. L J. 328

(ii) The non-production of a witness who is mentioned in the dying declaration and in the statement of an other witness, could not justify the court for drawing the inference against the prosecution as it would be an interference with the discretion of the prosecutor.

Bakhshish Singh Vs The State of Punjab
A.I.R. 1957 S.C. 904 :

Adverse Inference

(iii) No adverse inference can be drawn against the prosecution from the fact that the opinion of the handwriting expert has not been obtained with respect to the endorsement on the acknowledgment receipt.

An adverse inference can only be drawn if prosecution withholds certain evidence and not merely on account of its failure to obtain certain evidence. So there is no question of presuming that the evidence should have been against the prosecution U/s 114 illustration (g) of the Evidence Act.

Sirchand K. Khetwani Vs The State of Maharashtra
A I.R. 1967 S.C. 450 : 1967 Crt. L.J. 414

Advocate

The legal profession demands that when the money of the client comes into the possession of an agent of an advocate, otherwise than as earmarked fees, he has to treat himself as in the position of a trustee of the client even if he has a lien on such money. He cannot appropriate the same without consent, implied or express or without an order of the court.

A,I R 1957 S C 149 : 1957 Cri L.J 300

Advocate Consent

No serious defect in mode of conducting a criminal trial can be justified or cured by the consent of the Advocates of the accused.

Willie (William) Slanly Vs State af Madhya Pradesh
A.I R 1956 S.C. 116 1956 Cri. L.J 291

Affidavit

(i) In the Writ of Habeas Corpus when the issue of facts are raised and the actions of the Police Officers are challenged an affidavit becomes necessary.

Ranjit Singh Vs The State of Pepsu (now Punjab)
A I.R 1959 S.C. 843 . 1959 Cri L J. 1124

(ii) The statement made by the appellant in the affidavit found to be false, he has committed an offence u/s 193 I.P.C.

A.I.R. 1959 S.C. 843 : 1959 Cri. L.J. 1124

(iii) Whether the court feels satisfied with one affidavit or with another is a matter mainly of its opinion and conviction.

Mohd Ikram Hussain Vs The State of Uttar Pradesh
A I.R 1964 S.C. 1625 : 1964 (2) Cri. L.J. 590

(iv) Ordinarily, the court acts upon the affidavit of one side or that of the other. But if one side omits to make affidavit in reply the affidavit of the other side, it remains uncontroverted.

Hazara Singh Gill Vs The State of Punjab
A.I.R. 1965 S.C 720 : 1965 (1) Cri. L.J. 639

(Affidavit-contd)

(v) The definition of the offence of giving false evidence applies to the affidavit.

Baban Singh Vs. Jagdish Singh
A I.R. 1967 S.C. 68 · 1967 Cri. L.J. 6, 1966 B.L.J. R 843

(vi) Since no allegation of the malice or dishonesty have been made in the petition personally against the Minister, it is not possible to say that his omission to file an affidavit in reply by itself would be any ground to sustain the allegation of mala fides or non-application of mind.

P.L. Lakhanpal Vs. Union af India
A.I.R. 1967 S.C. 908

After Thought

An objection by the accused that he has not been given opportunity to explain any circumstances appearing in evidence against him not taken up at the appellate stage and complains of prejudice for the first time in Supreme Court, the inference is strong that the plea is afterthought and that there was no real Prejudice.

K C. Mathew and others Vs. State of Travancore-Cochin
A.I.R. 1956 S.C. 241 1956 Cri. L.J. 444

Age

(i) **Age of the Kidnapped girl be taken at the time of occurrance.** A subsequent charge in law increasing the age limit shall not effect.

A.I.R 1955 S.C . 374 : 1955 Cri. L.J. 1296

(ii) Conclusive evidence of the girl's age may be the birth certificate if it is not available then in conjunction with such oral testimony as may be available.

Sidheswar Ganguly Vs. State af West Bengal
A.I.R. 1958 S C. 143 1958 Cri. L,J. 273

(iii) Certified copies from school registers coupled with the affidavit of the father stating the date of her birth and the statement of the girl herself about her own age amount to evidence under the Indian Evidence Act.

Mohd. Ikram Hussain Vs. The State of Uttar Pradesh
A.I.R 1964 S C. 1625 : 1964 (2) Cri. L.J. 590

Agent

(i) With regard to the nature of duties of the appellant as the Secretary of the Society, his status was that of an agent and not of a servant. Moreover whether the appellant should be charged u/s 408 or S 409 of I.P.C. was of no importance in the present case, as the sentence imposed on him under section 409 viz four years R.I. could be maintained even u/s 408 Indian Penal Code.

Dhandi Prasad Singh Vs. The State of Uttar Pradesh
A.I.R. 1956 S C. 149 : 1956 Cri. L J. 322

(ii) The expression "In the way of his business as agent'' means not only a person who carry on profession of agency but includes also a person who is entrusted with property in course of his duties as agent. Director and Chairman of the Company can be the agent of the company.

R K. Dalmia and others Vs The Delhi Administration
A.I.R. 1962 S.C. 1821 : 1962 (2) Cri L.J. 305

Aggressor

One party was aggressor and the other received injuries, one out of them proved fatal. It could not be said that the party who received injuries also constituted unlawful assembly.

Gajanand and others Vs. State of Uttar Pradesh
A.I.R. 1954 S.C. 695 : 1954 Cri L.J. 1744

Aggrieved person

The general power of attorney launched the First Information Report. The informant was held to be the person aggrieved and so the law was rightly set in motion.

Ram Chandra Prasad Vs. The Stats of Bihar

A.I R. 1967 S.C. 349 1967 Cri. L.J 409, 1967 SCD 61

Alibi

(i) The plea of alibi involves a question of fact and when both courts below concurrently found that fact against the accused, the Supreme Court cannot, on an appeal by special leave, go behind that concurrent finding of fact.

Thakur Prasad Vs. The State of Madhya Pradesh
A.I.R 1954 S.C. 30 . 1954 Cri. L.J 260

(ii) The burden of proving the case against the accused is on the prosecution irrespective of whether or not the accused have made out a plausible defence and has discharged the onus of alibi.

Gurcharan Singh and another Vs. State of Pb.
A.I.R 1956 S.C 460 : 1956 Cri. L.J. 827

Allocation

Allocation of business under Art. 166 (3) of the constitution is not made with reference to particular laws which may be in force at the time the allocation is made ; allocation may be made even in advance of legislation made by parliament to be available whenever parliament makes legislation conferring power on a state Government with respect to matters in list 1 of the seventh schedule **It is not necessary that there should have been an allocation** by the governor under Art. 166 (3) of the constitution of the power **to detain under defence of India act and Rules after they are passed.** It would be enough if such allocation already exists

Smti Godavarti Shamrao Parulekar Vs. The State of Maharashtra and others
A I.R. 1964 S C. 1128 : 1962 (2) Cri. L.J. 222

(*Allocation-contd*)

If an order of conviction is challenged by the convicted person but the order of acquittal is not challenged by the State than it is only the oder of conviction that falls to be considered by the Appellate Court, and not the order of acquittal In exercising the powers conferred by Section 423 (1) (b) the High Court cannot therefore convert the order of acquittal into one of conviction and that result can be achieved only by adopting procedure prescribed under Section 439 of the Criminal Procedure Code.

It was held that the High Court acted without jurisdiction in altering the finding of acquittal of Lakhan on the charge under section 302 Indian penal Code.

Lakhan Mahta Vs State of Bihar
A.I.R. 1966 S.C. 1742 (Page 1745) 1966 Cri. L J. 1349

Alteration

Alteration of the conviction from S. 299 to S. 300 read with S. 488 of the Calcutta Municipal Act of 1923 was no alteration in the substance of the accusation but in the section more properly applicable to the facts of the case.

Nani Gopal Biswas Vs Municipality of Howrah
A.I.R. 1958 S.C. 141 : 1958 Cri. L.J. 271

Alteration of Charge

The High Court did not act without jurisdiction in altering the conviction u/s 165 A to one u/s 161/109 I P.C. as the effect in law under S. 161/109 I.P.C. is precisely the same as that of 165 A, at least so far as the abetment of an offence actually committed is concerned and particularly when no prejudice to the accused has been caused.

Om Parkash Vs State of U.P.
A.I.R. 1960 S.C. 409 : 1960 Cri.L.J. 544

Alternative

(i) That the alternatives presented for the prosecution were not in any sense the presentation of any inconsistent cases. Doubtlessly **the prosecution cannot be permitted to lead evidence relating to inconsistent cases.**

Sardul Singh caveeshar Vs The State of Bombay
A.I R 1957 S.C. 747 · 1957 Cri. L.J. 1325

(ii) The appellant was charged with two conspiracies in the alternative. One was to commit an offence of forgery and to use the forged document and the other was the offence of fraudulantly or dishonestly using the licence containing the forged certificates and endoresments. It was not a case of two

alternate conspiracies and such a charge is justified by the provisions of S. 236 of the Criminal Procedure Code.

Note—Both the conspiracies were to commit offences punishable with R.I. for two yers or upwards)

Senairam Doongarmall Vs commissioner of Income Tax Assam
A.I.R. 1961 S.C. 1589 .1961 (2) Cri. L.J. 728

Alter the Finding

(i) The High Court has the power to alter the fiding and substitute section 149 of Penal Code for S. 34 I.P.C

Tilkeshwar Singh and others Vs State of Bihar
A.I·R. 1956 S.C. 238 . 1956 Cri L.J. 441

(ii) The expression alter the finding in Section 423 (1) (b) of Cr P C. has only one meaning and that is to alter the finding of conviction and not the finding of acquittal. The court of Session or High Court is not entitled to alter the the finding of acquittal in exercising its power u/s 423 (1) (b) (2) of the Code.

The State of Andhra Pradesh Vs Thadi Narayana
A.I R. 1962 S.C. 240 .1962 (1) Cri L J. 207

Amendment

The amendment to S. 337 of the Criminal procedure code which came into force in Jan, 1956 has no application to a pardon tendered on 1.12.55.

Kanta Prashad Vs Delhi Administration
A I R 1958 S.C 350 · 1958 Cri. L.J. 698

American Decision

In considering the authorities of the Superior courts in the United States, the courts in India would not incorporate principles foreign to the Indian Constitution on the slippery ground of apparent similarity of expressions or concept in an alien jurisprudence developed by society whose approach to similar problems differs from Indians

State of Uttar Pradesh Vs Deoman Upadhyaya
A.I.R 1960 S.C. 1125 : 1960 Cri. L.J. 1504

Analogy

(i) The analogy of the English Practice would be mis-leading as an aid to the construction of S. 494 Cr. P.C. The scheme of our Criminal Procedure Code is substantially different. The provisions of the **Attorney** general to enter **nolle proseque** in S. 333 Criminal Procedure and 494 Cr.P.C does not correspond, to it.

The State of Bihar Vs Ram Naresh Pandey and another
A.I.R. 1957 S.C 389 : 1557 Cri. L.J. 567

(*Appeal-contd*)

(viii) Articles 136 of the constitution does not confer right of appeal on party but it confers a discretionary power on the Supreme Court in suitable cases. Supreme Court will not interfere on question of fact except in exceptional cases.

The State of Bombay Vs Rury Mistry and another
A.I.R. 1960 S.C. 391 : 1960 Cri L.J. 532

(ix) Appellate court has no power to direct that the appeal shall be heard only on point of sentence. This order is illegal The appellant, as of right, can insist that since the appeal had not been summarily dismissed, his appeal should be heard on merits as well. Even if admitted on question of sentence appellant is entitled to be heard on merits.

Rabari Ghela Jadav Vs State of Bombay
A.I.R. 1960 S.C. 748 : 1960.Cri. L.J. 1156

(x) An order of a single judge u/s 476 Cri. P.C. of High Court is appealable under S. 476 (B) of the code and such appeal lies to the High Court under clause 10 of the later patent and not to the supreme court.

Note :—In a case reported in AIR 1961 S.C. 181 the memorandum of appeal was retured for proper presentation to the proper court.

Narain Dass Vs State of Uttar Pradesh
A.I.R. 1961 S.C. 181 : 1961 Cri. L.J. 317

Jail—Appeal

(xi) It can not be said that the proviso to S. 421 Criminal Procedure Code offends against the provision of Art. 14 of the constitution. The appeal of a convicted person can be heard in his absence without giving any opportunity of being heard

Partap Singh Vs State of Vin-Pradesh
A.I.R. 1961 S.C. 586 : 1961 Cri. L.J. 733.

(xii) Article 136 of the constitution confers a wide discretionary power on the Supreme Court to entertain suitable cases, not otherwise provided for by the Constitution.

A.I.R. 1961 S C. 715 : 1961 (I) Cri. L.J. 766

(xiii) What may be called the golden thread running through all the decisions is the rule that in deciding appeals against acquittal the court of appeal must examine the evidence with particular care, must examine also the reasons on which the order of acquittal was based and should interefere with the order only when satisfied that the view taken by the acquitting judge is clearly unreasonable.

Harbans Singh Vs The State of Punjab
A.I.R. 1962 S.C, 439 : 1962 (1) Cri. L.J. 479

(*Appeal-contd*)

(xiv) High Court in revision can set aside the order of acquittal at the instance of private parties, though the state may not have thought fit to appeal but this jurisdiction should be exercised by the High Court only in exceptional cases when there is glaring mistake in the procedure or error in law and there has been a flagrant mis-carriage of justice.

K. Chinnaswany Reddy Vs State of Andhra Pradesh
A.I.R. 1962 S C. 1788

(xv) Appeal from acquittal can not be treated differently from an appeal from conviction.

Radha Kishan Vs State of Uttar Pradesh
A.I R. 1963 S.C. 822 : 1963 (1) Cri. L J. 809

(xvi) There is nothing to perclude the Supreme Court from deciding the appeals even the orders from which the appeals have arisen has been revoked when it appears that it would be in the interest of justice to decide the points raised in appeal.

Smt Godavri Shamrao Vs State of Maharashtra
A.I.R. 1964 S.C. 1128 : 1964 (2) Cri. L J 222

(xvii) After acquittal the presumption of innocence still remains and the fact that one court has doubted or disbelieved the evidence strengthens the hands of the accused. It behoves the High Court in such cases to furnish strong reasons why the benefit of doubt should not go where it has already been placed in the lower court.

(**Note** :—Appeal was allowed on this sole ground).

Ram Janam Singh Vs State of Bihar
A.I R. 1956 S.C. 643 : 1956 Cri. L J. 1254

(xviii) If an order of conviction is challenged by the convicted person but the order of acquittal is not challenged by the State then it is only the order of conviction that falls to be considered by the Appellate Court and not the order of acquittal. In exercising the powers conferred by Section 423 (1) (b) the High Court cannot, therefore, convert the order of acquittal into one of conviction and that result can be achieved only by adopting procedure prescribed under Section 439 of the Criminal Procedure Code.

It was held that the High Court acted without jurisdiction in altering the finding of acquittal of Lakhan on the charge under Section 302 Indian Penal Code.

Lakhan Mahto Vs. The State of Bihar
A I.R. 1966 S C. 1742 : 1966 Cri L J. 1349

Application of Evidence.

In cases where the evidence is of a circumstantial nature, the circumstances from which the conclusion of guilt is to be drawn, should, in the first instance, be fully established, and the circumstances so established should be consistent only with the hypothesis of the guilt of the accused person; that is, the circumstances should be of such a nature as to reasonably exclude every hypothesis but the one proposed to be proved. To put it in other words, the chain of evidence must be so far complete as not to leave any reasonable ground for a conclusion consistent with the innocence of the accused person.

Charan Singh Vs State of U.P.
A.I R. 1967 S C. 520 : 1967 Cri L.J.525

Application for leave

(i) Application for leave to file appeal to Supreme Court should be disposed of without delay, Delay of on year and ten months is without justification.

Bissu Maghu Vs State of U P.
A I R. 1954 S.C. 714 : 1954 Cri. L J. 1796

(ii) High Court gives a clear finding that there were more than five persons and believes the eye witnesses who identify the two appellants. The mere fact, that only two out of the band of attackers were satisfactorily identified, does not weaken the force of the finding that more than five were involved. Use of S. 149 was, therefore, justified.

Nar Singh and other Vs State of U.P.
A.I.R. 1954 S C. 457

Apprehension

(i) As soon as the cause for the reasonable apprehension has disappeared and the threat has either been destoryed or has been put to rout, there can be no occasion to exercise the right of private defence.

Jai Dev and others Vs State of Punjab
A.I R. 1963 S.C. 612 : 1963 (1) Cri. L J. 495

(ii) The deceased cutting the crops peacefully, which the accused calimed to be there. The act of the deceased did not amount to robbery mentioned in the exception 2 of Section 300 and there was no reasonable apprehension on the part of the accused that they would be killed or hurt by the deceased.

Gurditta Mal anothers Vs The State of Uttar Pradesh
A.I.R. 1965 S.C. 257 : 1965 (1) Cri. L.J. 242

Appreciation of evidence

(i) The High Court Judges dealing with a case did not reject the oral evidence

(*Appreciation of evidence-contd*)

but, as a matter of prudence and caution, asked for circumtances to lend support to the evidence of eye withnesses. The corroboration was not that kind of corroboration which one requires in the case of evidence of an approver or an accomplice but corroboration by some circumstances which would lend assurance to the evidence before them and satisfy them that the particular accused persons were really concerned in the murder of the deceased.

Lachman Singh and others Vs The State
A.I.R. 1952 S C. 167 : 1953 Cri. L J 863

(ii) That the witnesses are women and the fact of seven men hangs on their testimony is no good ground for saying that corroboration is necessary to act on their evidence.

Dalip Singh and others Vs The State of Punjab
A I.R. 1953 S.C. 364 : 1953 Cri. L.J. 1465

(iii) The court cannot apply one standard in appreciating evidence against the accusd who is a clerk and another who is an officer.

Bhagat Ram Vs State of Punjab
A.I.R. 1954 S.C. 621 : 1954 Cri. L.J. 1645

A case is transferred if there is a reasonable apprehension on the part of a party to a case that justice will not be done. A petitioner is not required to demonstrate that justice will inevitably fail. He is entitied to a transfer if he shows circumstances from which it can be inferred that he entertains an apprehension and that it is reasonable in the circumstances alleged. It is one of the principles of the administration of justice **that justice should not only be done but it should be seen to be done.** However, a mere allegation that there is apprehension that justice will not be done in a given case does not suffice. The Court has further to see whether the apprehension is reasonable or not. To judge the reasonableness of the apprehension the state of mind of the person who entertains the apprehension is no doubt relevant but that is not all. The apprhension must not only be entertained, but must appear to the Court to be a reasonable apprehension.

Note :—The case was not transferred.

Gurcharn Dass Vs The State of Rajasthan
A.I.R. 1966 S.C 1418 : 1966 Cri. L J. 1071

(iv) Where one witness does not corroborate another witness in material particulars, the blame cannot be put on the ADVOCATE for the accused for not having put the statement of a previous witness to the subsequent witness. It

(Appreciation of Evidence-contd)

is no part of the duty of defence advocate to fill up the lecuna in the evidence adduced by the prosecution.

Bansi Dhar Mohenty Vs. The State of Orissa
A.I.R. 1955 S.C. 585 : 1955 Cri. L.J. 1300

(v) When the witnesses were suddenly roused from their sleep in the early part of the dark night without any previous apprehension, it wou'd be difficult for them to notice what they claimed to have clearly observed.

Mohinder Singh Vs. State of Punjab
A.I.R. 1955 S.C. 762 : 1955 Cri. L.J. 1542

(vi) If the basic evidence of PW-1 is subject to reasonable doubt as to its correctness there is no difficulty in viewing the evidence of other two witnesses PW 4 and PW 5 with the same doubt.

Mohinder Singh Vs. The State of Pb.
A.I.R. 1955 S.C. 762 : 1955 Cri. L.J. 1542

(vii) Person witnessing crime but not giving information. The evidence of such man should be scanned with much caution as it is unsafe to hang the accused on his sole testimony unless he is corroborated on the material parts of the story and must satisfy the reasonable mind as a truthful witness.

Vemireddy Satyanaryan Reddy and others Vs. State of Hydrebad
A.I.R. 1956 S.C. 379 : 1956 Cri L.J. 777

(viii) When an accused person offers a reasonable explanation of his conduct, then even though he cannot prove his assertion, they should ordinarily be accepted unless the circumstances indicates that they are false.

Ahir Raja Khima Vs. State of Surashtra
A.I.R. 1956 S.C. 217 : 1956 Cri. L.J 426

(ix) Where the appreciation of evidence by trial court is highly unsatisfactory the High Court is not only entitled but bound to give effect to its independent conclusion on evidence, giving due weight to all the circumstances which have normally to be kept in view in cases of this kind.

Surjan and others Vs State of Rajasthan
A I.R. 1956 S.C. 425 : 1956 Cri. L.J. 815

(x) The court should give sufficient weight to the evidence elicited in cross-examination of the prosecution witnesses showing that all the accused persons belongs to the party actively opposed to the party of the complainant and that they had good reasons for trying to utilize a true case of dacoity by falsely implicating their enemies.

Ram Shanker Singh Vs State of U.P.
A.I.R. 1956 S.C. 441 : 1956 Cri. L.J. 822

Appreciation of Evidence-contd)

(xi) When one part of a witness evidence is disbelieved, judges of fact have the right to act on the rest of his testimony.

Sukha and others Vs. State of Rajasthan
A I.R. 1956 S.C. 513 : 1956 Cri. L.J. 923

(xii) It is for the court of fact to determine as to whether they would accept the prosecution evidence concerning the part played by the appellant in the occurrence and as to whether the witness should or should not be believed.

Khacheru Singh and others Vs State of U.P
A.I R. 1956 S.C. 545 : 1956 Crl. L.J. 950

(xiii) Court can only proceed on the evidence given on oath in the witness box by the witness and not on the statement made in the letter.

Ramjanam Singh Vs. The State of Bihar
A.I.R. 1956 S.C. 643 · 1956 Cri. L J. 1254

(xiv) Believing or disbelieving witness is essentially a matter for the courts of fact and in an appeal by special leave Supreme Court will not ordinarily interfere with their discretion.

Brij Bhukhen etc. Vs. The State of U.P.
A.I.R. 1957 S.C. 474 : 1956 Cri. L.J. 591

(xv) Witness naming five assailants the court gave benefit of doubt to two of them and acqutited them, it is no reason for disbelieving the testimony of a witness for the remaining accused.

Ram Rattan and others Vs. The State of Rajasthan
A.I.R. 1962 S.C: 425 : 1962 (1) Cri. L.J. 473

(xvi) The maximum **falses in Uno, falsue in omnibus** (false in one thing, false in every thing) is neither a sound rule of law nor a rule of practice. Hardly one comes across a witness whose evidence does not contain a grain of untruth or at any rate exaggerations, embroideries or embellishment. It is therefore the duty of the court to scruitinise the evidence carefully but it can not obviously disbelieve the substratum of the prosecution case or the material part of the evidence and reconstruct a story of its own out of the rest.

Ugar Ahir and others Vs The State of Bihar
A.I R. 1965 S.C. 277 : 1965 (1) Cri. L J. 256

(xvii) The Supreme Court does not ordinarily interfere with a finding of the High Court based on appreciation of evidence, unless there are strong reasons for doing so.

Note :—In this case the appellate court did not interfere on the question of fact.

Jagat Bahadur Vs. State of Madhya Pradesh
A.I.R. 1966 S.C. 945 : 1966 Cri. L J. 709

Approver

(i) The moment, pardon is tendered to the accused by the District Magis

(*Approver-contd*)

trate, he must be presumed to have been discharged where upon he ceased to be an accused and becomes a witness. The tendering of pardon by the District Magistrate even after the Commitment of the case is valid. The proviso to S. 337 Cr. P.C. contains an additional provisions which empowers the District Magistrate to tender pardon where the offences are under inquiry or trial. So the evidence of such witness is admissible.

A.J. Peiris Vs State of Madras
A.I.R. 1954 S.C. 616 : 1954 Cri. L.J. 1638

(ii) An approver is a competent witness but the approver should be reliable witness and he must receive sufficent corroboration.

Swaran Singh Rattansingh Vs State of Punjab
A.I.R. 1957 S.C. 637 : 1957 Cri. L.J. 1014

(iii) The corroboration need not be of a kind which proves the offence against the accused. It is sufficient if it connects the accused with the crime Letters written by the accused to the approver, clearly corroborates the approver's evidence and shows the conspiracy. It establishes the case of prosecution both in respect of the offence of conspiracy and the offence of cheating.

S. Swamirathnam Vs The state of Madras
A.I.R. 1957 S.C. 340: 1957 Cri. L.J. 422

(iv) A statment of the brother of the approver is no corroboration of the approver. It only means that the approver made a confessional statement to his brother. The evidence of another witness cannot operate as a corroboration of the approvers story, because the knife was got prepared by accused No. 1 and the appellant nine weeks before murder. The findings of the knife at the instance of first accused also is no corroboration. **There is no independent corroboration of the participation of the appellant in the offence.** Conviction was set aside.

Bhiva Doulu Patil Vs State of Maharashtra
A.I R. 1963 S.C. 599 : 1963 (1) Cri. L.J. 489

(v) The approver's evidence must show that he is a reliable witness and that is the test which is common to all witnesses. Evidence not shown to be unreliable, charge, to jury is not vitiated.

Jnanendra Nath Ghose Vs The State of W. Bengal
A.I.R. 1959 S.C. 1199 : 1959 Cri. L.J. 1492

(vi) There should be corroboration in material particulars in the approver's evidence. The corroboration in material particulars must be such as to connect or identify each of the accused with the offence.

Jnanendra Nath Ghose Vs State of W. Bengal
A.I.R. 1959 S.C. 1199 : 1959 Cri. L J. 1492

(*Approver-contd*)

(vii) Pardon tendered found illegal. Approver would be a competent witness.

State of A P. Vs Chemala Pati etc.
A.I.R. 1963 S C. 1850 : 1963 (2) Cri L.J 671

(viii) It must be shown that the approver is a witness of truth, the evidence adduced in a case cannot be considred in compartments and even for judging the credibility of the approver, the evidence led to corroborate him in material particulars would be relevant for consideration. The High Court should bear this in mind for deciding whether the evidence of the approver should be acted upon or not.

Note :—Acquittal was set aside and the case was remanded back.

State of Andra Pradesh Vs Chemala Pati Ganeswarao etc.
A.I.R. 1963 S.C. 1850:1963 (2) L J. 671

(ix) Though the conviction of an accused on the testimony of an accomplice can not be said to be illegal yet the courts as a matter of practice, will not accept the evidence of such a witness without corroboration in material particulars.

Bhiva Doulu Patil Vs State of Maharashtra
A.I.R. 1963 S.C. 599 : 1963 Cri. L.J. 489

(x) Pardon can be tendered in the offiences which are not exclusively itrable by the High Court or the court of Session but which are punishable with imprisonment exceeding 10 years such as 409 I.P.C. Pardon can also be tendered in respect of offence u/s 120 (b) I.P.C. because the punishment for it is the same as that for the offence u/s 409 I.P.C.

State of A P. Vs. Chemla Pati etc
A.I R. 1963 S C. 1850. 1963 Cri. L.J. 671

Argument.

A mere ground of delay in giving judgment does not fall within the words "Fit one for appeal to the Supreme Court" even if it is felt that the delay might have lead to omission to consider arguments on question of law and facts. Held the certificate granted by the Calcutta High Court was not a proper certificate and was cancelled.

Achyut Adhicary Vs. State of West Bengal
A I.R, 1963 S.C. 1039: 1963 Cri. L J. 59

Army Act.

S. 52 of the Army Act does not create new offences but prescribes higher punishment if the said offences are tried by court Martial certain offences are triable both by an ordinary criminal court having jurisdiction to try such offences and a court Martial. Firstly, the proceedings shall be instituted

before a court martial and if no such decision was arrived at, the army act could not obviously be in the way of a criminal court exercising its ordinary jurisdiction in the manner provided by law·

Majoı E.G. Baısay Vs. State of Bombgy
A·I.R. 1961 S.C. 1762 : 1961 (2) Cri.L.J. 828

Arrears of Rent

The provisions of Section 259 of the Cantonment Act can be utilized for realization of arrears of rent on land and building only if such rent is recoverable by a Board or a Military Estate Officer under the Act or the rules made thereunder. The word "recoverable" in the context obviously means "claimable", for Section 259 itself provides for the manner of recovery. Therefore, action for recovery can be taken under Section 259 with respect to rent on land and buildings provided such rent is claimable by a Board under the Act or the rules framed thereunder.

The Cantonment Board Ambala Vs. Pyare Lal
A.I.R 1966 S.C. 108 : 1966 Cri.L.J. 93

Arrest

(i) In the prevention of corruption Act under section 3 and 6 the order of arreste from the magistrate be obtained, during the time the police is investigating the case and not when they have completed their investigation and ar initiating proceedings against the suspected person under section 190 Cr.P.C.

R.R. Chari Vs The State of Uttar Pradesh
A.I.R- 1951 S C. 207 . 195 Cri.L.J. 775

(ii) In a case where assessee has been arrested and is being detained in jail in exectuion of a warrant of arrest issued under section 13 of the Bombay city Land Revenue Act 1876 for the recovery of the demand certificate u/s 46 (2) of the Income Tax Act, no complaint can be made of infringment of Art 21 of the constitution as long as those sections stand.

Purshottam Govindji Vs Sr.B.M. Desai
A.I.R. 1956 S.C. 20 : 1956 Cri.L.J. 129

As soon as it May Be

"As soon as may be" begins to run from the time the detention in pursuance of the detention order begins and to mean to do so with a reasonable time with an understanding to do within the shortest possible time.

Abdul Jahar Butt Vs State of J&K.
A.I R. 1957 S.C. 281 . 1957 Cri L.J. 404

Assault

Three accused assaulted the complainant in the first incident. They pursued the complainant and they persisted in assaulting him and those who had come to his help. The clear implication of this was that the assault in the second incident was the result of previous concert. The common intention of every one is proved. So the conviction u/s 326/34 IPC can be sustained.

Khachru Singh Vs State of U.P.
A.I.R 1956 S.C. 546 : 1956 Cri. L.J. 950

Assembly

(i) Five persons acquitted out of seven. The number in the commission of crime is specifically seven. The all accused are members of unlawful assembly and Section 149 is rightly applicable. So the conviction shall stand.

Marchi Lal Pakku Vs State of Madras
A.I.R 1954 S.C. 648 : 1954 Cri. L.J. 1668

(ii) A free fight according to J Harison "when both sides mean to fight from the start, go out to fight and there is a pitched battle. The question of who attacks and who defends such a fight is wholly immaterial and depends on the tactics adopted by the rival commandars." There can be **no question of free fight when** there was a clear findings of the High Court that **one party was aggressor.**

Gajanand of other Vs State State of U.P.
A.I.R. 1954 S.C. 695 : 1954 Cri. L.J. 1746

Assistant Sessions Judge

The High Court in its revisional jurisdiction has the power to enhance sentence beyond the limit of maximum sentence that could have been imposed by the trial court on the accused person

Note —The sentence of five years by the Assistant Session Judge enhanced to 10 ears R I each.

Note : No. (ii) but see AIR 1966 S.C. 945, 1966 Cri L.J. 709.

Sarjug Raj and others Vs State of Bihar
A.I.R 1958 S.C. 127 1958 Cri. L.J. 268

Assessor

(i) Trial in respect of offence U/s 477 IPC is triable by Jury while trail of 409 IPC is with the aid of assessors. The session judge had no jurisdiction to refer the whole case to the High Court u/s 307 Criminal Procedure Code.

Chandi Prasad Singh Vs State of of U P.
A.I.R. 1956 S.C. 149 : 1956 Cri. L. J. 322

(ii) An objection by accused, that he had been deprived of the benefit of the trial

of jury by being charged u/s 409 instead of 408 I.P.C. and has been prejudiced, was not taken in trial court, the supreme court will not entertain.

Chndi Prasad Singh Vs The State of U.P.
A.I.R. 1956 S.C. 149 : 1956 Cri. L.J. 322

Association

The association which was given the facility of obtaining scrap at more favourable prices than dealers, and it was that body which was subject to control in the shape of having to sell what it had purchased from controlled sources. So it is liable for its contravention. **The President of the Association can be held liable for the sales affected by its employees.**

Harish Chandra Vs State of Madhya Pradesh
A.I.R. 1965 S.C. 932 : 1965 (2) Cri. L.J. 24

Assume

Where a mutual conflict develops and there is no reliable and acceptable evidence as to how it started and as to who was the aggressor, in such a situation right of private defence on either sides, cannot be assumed. Such a case will be a case of sudden fight and conflict and has to be dealt with u/s 300 and its exception 4, of IPC.

Jumman and others Vs State of Punjab
A.I R. 1957 S.C. 469 : 1957 Cri. L.J. 586

Attachment

The provisions of section 87 and 88 of Cr.P-C. would not be available for securing the presence of a person who is alleged to have committed contempt. Further held court can correct its mistake of directing the property to be made over to the Govt. of which the Govt. is not the owner, and to the person from whom it was wrongly taken.

M/s V. G. Peterson Vs O.V. Forbes and another
A.I.R. 1963 S.C. 692 : 1963 (1) Cri L.J. 633

Attempt

(i) An attempt to commit robbery by the appellant and his companions numberd five or more and in fact no robbery was committed by reason of the hue and cry raised by M & G. The dacoits took to their heels without collecting any booty. The offence of dacoity was therefore completed, the momemt they took to their heels without any booty. There was an attempt to commit robbery and the accused would be guilty of dacoity and would be punishable u/s 395 I.P.C.

Shavam Bihari Vs State of U P.
A.I.R. 1957 S.C. 320 : 1957 Cri. L.J. 420

(*Attempt-contd*)

(i) Three accused person approached one R. and they represented themselves to be proficient in duplication of currency notes The complainant R gave notes of Rs. 200 to the appellant and the second accused who was carrying certain instruments. Held a false representation had been made and sum of Rs. 200 had been obtained. By falsely representing and taking a delivery of Rs. 200 the appellant and the accused had not only made a preparation to commit an offence but an attempt to commit an offence of cheating has been made.

Bashirbhai Mohamedbhai Vs State of Bombay
A:I.R 1960 S C. 979 : 1960 Cri. L.J. 1383

(iii) No doubt the complainant never believed that the accused could actualy duplicate currency notes and he had only feigned belief, in order to trap the accused, it makes, no difference so far as an attempt to cheat is concerned.

A.I.R. 1960 S.C. 979 : 1960 Crl. L.J. 1383

(iv) In view of the proviso to section 234 of Criminal Procedure Code an offence of attempting to commit an offence is of the same kind as that other offence.

Banwari etc. Vs. State of U P.
A.I.R. 1962 S C. 1198 : 1962 (2) Cri. L J. 278

(v) Attempt to commit an offence can be said to begin when the preparation are complete and the culprit commences to do something with the intention of committing the offence and which is a step toward the commission of the offence.

Appellant applied to the university for permission to appear in M A Exam., representing himself to be a graduate while he was not.
Held :—The preparation to commit the offence was complete of the moment appellant had submitted application. The moment he despatched it he entered the realm of attempt to cmmit cheating.

Abhayanand Mishra Vs. State of Bihar
A.I.R 1961 S.C. 1698 : 1961 (2) Cri. L.J. 822

(vi) Attempt to murder by fire arm, the act amounting to an attempt to commit murder is bound to be the only and the last act to be done by the culprit. Even if it does not hit or something prevents it, the act is complete attempt u/s 307 I.P.C.

Omparkash Vs. State oj Punjab
A.I.R. 1961 S C. 1782 : 1961 (2) Cri. L J. 828

(vii) The course of conduct adopted by the appellant in regularly starving his wife comprised a series of acts which amounts to the attempt of murder and is within the purview of S. 307 of the Penal code.

Om Parkash Vs. The State of Punjab
A.I R. 1961 S.C. 1782 : 1961 (2) Cri. L.J. 828

(*Attempt-contd*)

(viii) Where a person does any overt act in relation to prohibited goods which he knows to be such and the act is done in consequence of a previous arrangement or agreement it would be a case where the person doing the act is concerned in dealing with the prohibited goods.

Both the words "concerned" and "deal' have a wide cannotation. The words "concerned in" mean "interested in, involved in, mixed up with" while the words "deal with" mean "to have something to do with, to concern one-self, to treat, to make arrangement, to negotiate with respect to something." Therefore, when a person enters into some kind of transaction" or attempt to enter into' some kind of transaction with respect to prohibited goods and it is clear that the act is done with some kind of prior arrangement or agreement, it must be held that such a person is concerned in dealing with prohibited goods. The fact that the act stopped at an attempt to purchase, as in the present case when the police intervened does not in any way mean that Sitaram was not concerned in dealing with the smuggled gold.

Assistant Collector of Customs Calcutta Vs. Sitaram
A.I R. 1966 S.C. 955 : 1966 Cri L.J. 712

Author.

Court can not dispose of the evidence of the expert doctor on the ground that he is comparatively young and his statement is not in accord with the opinion expressed in books on medical jurisprudence. **The opinions of authors are not given in regard to the circumstances exactly similar to those which have arisen before the court.** This will be an unsatisfactory way of disposing of the evidence of an expert unless the passages which are sought to discredit his opinion are put to him.

Bhagwan Dass & another Vs State of Rajasthan
A.I R. 1957 S.C. 589 : 1957 Cri L.J. 889

Authority

(i) The sea Custom Authorities are not a judicial tribunal and the adjudging of confiscation, increased rate of duty or penalty under the provisions of Sea Customs Act do not constitute a judgment or order of a court or judicial tribunal necessary for the purpose of supporting a plea of Double Jeopardy.

Maqbool Hussain Vs State of Bombay
A.I.R. 1953 S.C. 325 1953 Cri. L.J. 1432

(ii) The provisions i e. Articles 311 (1) of the Constitution and R. 1735 (C) of the Railway Establishment Code do not imply that the removal must be by the very same authority who made the appointment or by his direct superior.

(*Authortity-contd*)

It shall be enough if the removing authority is of the same rank or grade.

Mahesh Prasad Vs State of U.P.
A.I.R. 1955 S.C. 70 : 1955 Cri. L J. 249

(iii) There is no escape from the conclusion that the proceedings before the sea customs authority u/s 167 (8) of the Sea Custom Act are not prosecution within the meaning of Art. 20 (2) of the Constitution.

Thomos Dana Vs The State of Punjab
A.I R. 1959 S.C. 375 : 1959 Cri. L J 392

(iv) Cheif Secretary is an authority within the meaing of S. 24 of Evidence Act.

Pyare Lal Bhargava Vs The State of Rajasthan
A.I.R 1963 S C. 1094 . 1963 (2) Cri. L.J. 178

(v) A defamatory application moved to a district Panchayat Officer. The District Panchayat officer or the Panchayat has no lawful authority under the Punjab Gram Panchayat Act, to deal with the subject matter of the complaint and take proceedings against that person.

Kanwel Lal Vs State of Punjab
A.I.R. 1963 S C. 1317 : 1963 (2) Cri L J. 345

(vi) Custom authorities must be taken to be persons in authority and the statement caused by inducement, threat or promise would be inadmissble u/s 24 of the Evidence Act.

(**Note** :—Statements were found not caused by threat or inducement).

Sonivallabh Lila Dhar Vs The custom
A.I.R. 1965 S.C 481 : 1965 (1) Cri. L.J. 490

Autrefois

Where a court says, though erroneously, that it was not competent to take cognizance of the offence it has no power to acquit that person of the offence. An order of acquittal made by it, is, in fact, a nullity

Under the common law a plea of autrefois acquit or convict can only be raised where the first trial was before a court competent to pass a valid order of acquittal or conviction. Unless the earlier trial was a lawful one which might have resulted in a conviction, the accused was never in jeopardy.

Trial.

"The fact that all the witnesses for the presecution as well as for the defence had been examined and the further fact that the appellеant was aslo examined under s. 342 Cr.P.C. cannot in law be deemed to be a trial at all. It would be only repetition to say that for proceedings to amount to a trial they must be held before a Court which is, in fact, competent to hold them and which is not of opinion that it has no jurisdiction to hold them.

Note :—In this case Magistrate in the first case could take cognizance and he

framed the charge, examined the witnesses and the accused u/s. 342 but during arguments on the basis of one un-reported ruling of High court, Magistrate held that he had no option but to acquit because of the judgment. This was erroneous ruling. The first trial was no bar to the second.

Mohammad Sabi Vs The State of West Bengal
A.I,R. 1966 S.C. 69 : 1966 Cri. L.J. 75

Autrefois Convict

Art. 20 (2) of the Constitution incorporates within it the scope of the plea of autrefois convict as known to the British Jurisprudence or the plea of double jeopardy as known to the American Constitution by circumscribed it by providing that there should be not only a prosecution but also a punishment in the first instance in order to operate as a bar to second prosecution and punishment for the same offence.

Maqbool Hussain Vs State af Bombay
A.I.R. 1953 S.C. 325 : 1953 Cri. L J. 1432

Autre Fois Acquit

Two offences were committed with the margin of short period. First the accused assaulted T and then decided to ransack the house of T but on the way they decided to beat P. Held that the acquittal in one case does not operate as a bar to the conviction of the accused for murder. Provisions of Section 236 and S. 237 of Criminal Procedure Code were not applicable because the two offences were distinct and spaced slightly by time and place. The trials were separate as the two incidents were viewed as distinct transaction. Even if the two incidents could be viewed to be connected so as to form parts of one transaction, the offences were dist[illegible] and requires different charges.

Kharkan [illegible] others Vs State of U.P.
A.I.R. 1965 S.C. 83 : 1965 (1) Cri. L.J. 116 Jan. Part.

Averment Of Complaint

Averment of the complaint are to be looked into for the determination of the jurisdiction.

State of Madhya Pradesh Vs K.P. Ghiara
A.I.R. 1957 S.C. 196 : 1957 Cri. L.J. 322

Available

Doctor not available at session trial. The Session Judge should give reasons for transferring a statement of witnesses made in the committing court to the Session Court. Reasons not given. no infirmity.

Bakhshish Singh Vs The State of Punjab
A.I.R. 1957 S.C. 904

"B"

Bad Character

The evidence which discloses certain unpleasant things about the accused in the past can be examined by the courts in order to ascertain the motive for the murder and not for the purpose of determining as to whether the accused is a person of bad character likely to commit murder.

Mangal Singh Vs State of Madhya Bharat
A.I.R. 1957 S.C. 199 : 1957 Cri. L.J. 325

Bail

(i) The High Court has jurisdication to grant interim relief by way of bail to a detentu who has been detained under Rule 30 of the Defence of India Rules.

State of Bihar Vs Ram balak Singh
A.I.R. 1966 S C. 144 : 1966 Cri. L.J 1007

(ii) In a proper case the High Court has inherent power U/s 561-A Criminal Procedure Code to cencel the order of suspension of sentence and grant of bail to the appellant made u/s 426 Cr. P. C. and to order that the appellant be re-arrested and committed to Jail custody.

I. Pampapathy Vs The state of Mysore
A.I.R. 1957 S.C. 286 : 1967 Cri. L J. 287

Bailable Office

(iii) The High Court under the inherent powers u/s 561 A of Cr. P.C. can cancell the bail granted to an accused of a bailable offence.

Section 498 (1) of Criminal Procedure Code deals with cases of Persons accused of bailable as well as non-bailable offences.

Talab Haji Hussain Vs Madhukar Purshottam Mondkar and other
A.I.R. 1958 S C. 376 : 1958 Cri. L J. 701

(iv) The appellant was released on bail under the orders of the Magistrate in a

(*Bailable Office-contd*)

case under the Sea Custom Act and under sec. 5 of the Imports and Exports Control Orders on May 11, 1960. Both the offences are bailable. The High Court of Maharashtra in exercise of its inherent jurisdiction cancelled the bail orders and directed the appellant to surrender his bail.

Held—The Criminal Procedure Code makes no provision for the cancellation of bail granted under sec. 496. Nevertheless, at any subsequent stage of the proceedings it is found that any person accused of bailable offence is intimidating, bribing or tampering with the prosecution witnesses or is attempting to abscond, the High Court has power to cause him to be arrested and to commit him to custody for a such period. This jurisdiction of the High Court springs from the over-riding inherent powers of the High Court and can be invoked in exceptional cases only when the High Court is satisfied that the ends of justice will be defeated unless the accused is committed to custody.

The person committed to custody under this type of the order cannot ask for his release on bail under sec 496 Cr. P.C. but the High Court may by a subsequent order admit him to bail again.

A.I.R. 1967 Supreme Court 1639 (Nov. part)
1967 Cri.L.J. 1576

Bail.

(v) The delay in the examination of the witnesses is caused entirely by the laches of the prosecution. Therefore there is no reason for keeping the appellant in custody. The appellant in such circumstances is allowed to be released on bail after the date when prosecution evidence is to be examined, whether or not the prosecution witnesses are examined by that date.

A.I.R. 1967 Supreme Court 1639 (Nov part)
Cri. L.J. 1576

Bald Assertion.

Confession must be affirmatively proved that such confession was free and voluntary and that it was not preceded by any inducement to the prisoner to make a statement held out by a person in authority or that it was made until after such inducement had clearly been removed. A bald assertion by the prisoner that he was threatened, tutored or that inducement was offered to him, cannot be accepted as true.

Hem Raj Devilal Vs The State of Ajmer
A.I.R. 1954 S C. 462 : 1954 Cri L J. 1313

Ballistic Expert.

(i) It cannot be general proposition that in every case where fire arm has been used, in addition to the direct evidence, the prosecution must lead the evidency of a ballistic expert.

(*Ballostic Expert-contd*)

Held—that the fa lure of the prosecution to examine a ballistic expert had not introduced a serious infirmity in the prosecution case.

Gurcharan Singh Vs The State of Punjab
A I.R. 1963 S.C. 340 : 1963 (1) Cri.L.J. 323

(ii) The rifles which the appellants are alleged to have used have not been recovered and a revolver was recovered at the instance of the accused. This is difficult to understand for which prosecution is expected to examine the expert when the case of the prosecution does not allege injures to be caused by revolver.

Jai Dev Vs The State of Punjab
A.I.R 1963 S.C. 612 . 1963 (1) Cri.L.J. 495

(iii) That the fire Arm expert made the necessary tests and was careful in what he did. The conclusion of ballistic expert is sufficient to prove the guilt of the accused.

Note :—On this sole evidence conviction u/s 302 I.P.C. was upheld.

A.I.R. 1958 S.C. : 1958 Cri L.J. 300

Bar.

(i) When there are two alternative charges i.e. u/s 5 (2) of the Prevention of Corruption Act and u/s 409 I P.C acquittal of the accused under one charge is no impediment to his conviction on the other, moreover S. 403 (1) of the Cr.P.C. and Art. 20 of the Constitution do not apply. So there is no bar to his conviction u/s 409 I.P.C, when he has been acquitted u/s 5 (2) of the Prevention Corruption Act.

Baij Nath Prasad Tripathi Vs The State of Bhopal
A.I.R. 1957 S.C. 494 : 1957 Cri L.J. 597

(ii) The effect of section 53 of the Madras District Police Act is that all prosecutions whether against a police officer or a person other than a police officer must be commenced within three months after the act complained of. This bar of limitation is available only when the case is under the provisions of police Act or of the other law conferring powers on the Police.

The State of Andhra Pradesh Vs N. Venugopal and others
A.I.R. 1964 S.C. 33 : 1964 (1) Cri.L.J. 16

(iii) Two offences were committed with the margin of short period. First the accused assaulted T and then decided to ransack the house of T but on the way they decided to beat P and was assaulted.

Held :—that the acquittal in one case does not operate as a bar to the conviction of the accused for murder. Provisions of section 236 and 237 Cr. P. C.

(*Bar-contd*)

are not applicable because the two offences are distinct and spade slightly by time and place. The trials can be separated as the two incidents are viewed as distinct transaction. Even if the two incidents could be viewed to be connected so as to form parts of one transaction the offences are distinct and required different charges,

Kharkan Vs The State of Uttar Pradesh
A.I.R. 1965 S.C. 83 : 1965 (1) Cri. L J. 116

(iv) Section 186 of Sea Customs Act is no bar to the prosecution for an offence under the sea Custom Act in connection with a matter in which the award of confiscation, penalty, or increased rate of duty has been made u/s 167 (8) of the Act.

Soni vallabhdas Liladhar Vs The Asst. Collector of Customs Jamnagar
A.I.R. 1965 S.C. 481 : 1965 (1) Cri. L.J. 490

(v) If at the time when the judgment was delivered the Magistrate had no material before him to form an opinion that the petitioner had given false evidence, the Section 479-A of the Criminal Procedure Code will not be applicable. It is clear that the bar under Section 479/A (6) refers not to the legal character of the offence per se but to the possibility of action under Section 479/A upon the facts and circumstances of the particular case. If, for instance, material is made available to the Court after the judgment had been pronounced, rendering it clearly beyond doubt that a person had committed perjury during the trial and that material was simply unavailable to the Court before or at the time of judgment, it is very difficult to see how the Court could have acted under Section 479—A, Criminal Procedure Code at all. It cannot be supposed that the legislature contemplated that a case of perjury, however, gross should go unpunished in such circumstances. It appears to us that the true interpretation of the language of clause (6) of Section 479-A is that it does not operate as a bar to the prosecution for perjury in a case of this description.

Kuppa Goundan Vs. M.S.P. Rajesh
A.I.R. 1966 S.C. 1863 : 1966 Cri L.J. 1503

Bar

(vi) The appellants were witnesses in the inquiry in the High Court and they had fabricated false evidence. If any prosecution was to be started against them the High Court ought to have followed the procedure under Section 479-A of the Code of Criminal Procedure. Not having done so, the action under Section 476 of the Code of Criminal procedure was not open because of sub-s. (6) of Section 479-A and the order under appeal cannot be allowed to stand.

Baban Singh Vs Jagdish Singh
A.I.R. 1967 S.C. 68 : 1967 Cri. L.J. 6 : 1966 BLJR 843

(vii) There can be a fresh charge and trial under S. 307, Indian Penal Code inspite of the acquittal of the appellant on the minor charges. There is hence no reasons why an order for commitment under S. 307, Indian Penal Code cannot be made by the Additional Sessions Judge in spite of the acuittal of the appellant on the charges under Ss. 326 and 338, Indian Penal Code.

Ramekbal Tiwary Vs madan Mohan Tiwary
A.I R. 1967 S.C. 1156 (1161), 1967 Cri. L J. 1076

Belief

(i) The court has to pay due regard to the feelings and religious emotions of different classes of persons with different beliefs irrespective of the consideration whether or not they share those beliefs.

S. Veerabadran Chettiar Vs E.V. Ramaswani Naicker and others
A I.R. 1958 S.C. 1032 : 1958 Cri. L.J. 1565

(ii) 'Knowing or having reason to believe' in Para I of Section 201 of IPC and 'believes' in Para 2 mean the same thing. Punishment depends on gravity of offences which were committed and which accused knows or has reason to believe to have been committed. Erroneous belief of accused as regards offence committed does not provide basis of punishment.

Roshan Lal and others Vs State of Pb.
1965 S.C. 1413 : 1965 (2) Cr. L.J. 426 (Sept. Part)

Bigamy

(i) It is essential for the purpose of section 17 of the Hindu Marriage Act, tha the marriage to which section 494 IPC applies on account of the provisions of the Act, should have been celebrated with proper ceremonies and in due form. The first marriage of the accused did not take place according to the Hindu Law so the marriage (first) cannot be said to have been solemnized and therefore the appellant cannot be held to have committed the offence U/s 494 I.P.C.

Bhaurao Shankar Lokhande and another Vs The State of Maharashtra
A.I.R. 1965 S.C. 1564 : 1965 (2) Cri L.J. 44

(ii) The sexual relationship with a lady will not prove the marriage.

Kanwal Ram Vs The Himabhal Pradesh Administration
A.I.R. 1966 S.C. 614 : 1966 Cri L.J. 472

Blank Cheque

R and C could operate Jointly on the accounts of the company. R delivering blank signed cheque to C who misappropriate the same. Held R does not commit the offence.

R. K. Dalmia and others Vs The Delhi Administration
A I.R. 1962 S. C. 1821 : 1962 (2) Cri L J. 805

Blood

(i) The chemical examinar's duty is to indicate the number of blood stains on each exhibit and the extent of the stains. Merely to say that blood was detected is not enough.

Prabhu Babaji Navle Vs State of Bombay
A.I.R 1956 S.C. 51 : 1956 Cri. L.J. 147

(ii) A blood specimen was collected by a Doctor before investigation and there after it was handed over to the police on demand and ultimately the blood was submitted to the Chemical Examiner for its examination, it would be regarded as 'duly submitted' and the provisions of S. 510 Cr.P.C. has been complied with.

Ukha Kolhe Vs The State of Maharashtra
A I.R. 1963 S.C. 1531 : 1963 (2) Cri. L.J. 418

Blood Stained Clothes

Mere recovery of Blood stained Dhoti, in the absence of other evidence, is no corroboration or proof of prior concert or that of participation in the crime.

Prabhu Babaji Navle Vs The State of Bombay
A.I.R. 1956 S C. 51 : 1956 Cri. L,J. 147

Blood Stained Earth

The mere presence of the blood stained earth, and that earth was stained with human blood does not show that the blood was of the deceased.

Raghav Prahanna Tripathi Vs The State Utter Pradesh
A.I R. 1963 S C. 74 : 1663 (1) Cri. L.J. 70

Blow

A blow on the head with an axe which penetrates half an inch into the head is likely to endanger life. Sentence was converted into S. 326 IPC. from Sec. 302 I P.C.

Pandurang and others Vs State af Hyderabad
A:I R. 1955 S.C 216 : 1955 Crt. L J. 572

Blow—Single

(i) **Virsa Singh Versus State of Punjab.**

Where death is caused by a single blow, it is always much more difficult to be absolutely certain what degree of bodily injury the offender intended.

Once the existance of the injury is proved the intention to cause it will be presumed unless the evidence or the circumstances warrant an opposite conclusion.

(**Note :**—Inspite of one injury, the sentence u/s 302 I.P.C. was upheld and the appeal was dismissed).

Virsa Singh Vs State of Puniab
A.I.R. 1958 S C. 465 : 1958 Cri. L.J. 818

Breach

(i) By breach of section 52 and 92 of Factories Act manager and as well as an occupier will be liable to penalties.

Johu Douglas Keith Brown Vs State of West Bengal
1965 S.C. 1341, 1965 (2) Cri L.J. 423

Bombay Police Act

To be able to say that an act was done under the colour of an office one must discover a reasonable connection between the act alleged and the duty or authority imposed on the accused by the Bombay Police Act or other statutory enactment. Unless there is a reasonable Connection between the act complained of and the powers and duties of the officer, it is difficult to say that the act was done by the accused officer under the colour of his office.

Note :—Head constable received bribe for weakening the prosecution case. Prosecution launched after 6 months. Held that it does not attract the provisions of Bombay Police Aet u/s 161 (1)

State of Maharashtra Vs Narhar Rao
A.I.R 1966 S.C 1783 (Page 1785) 1966 Cri. L.J. 1495

Bribe

(i) There is no justification for the police authorities to bring about the taking of bribe by supplying the bribe money to the bribe giver where he has neither got it nor has the capacity to find it for himself. It is the duty of the Police authorities to prevent crimes being committed. It is no part of their business to provide the instrument of offence.

Raoshiant Bahadur Singh Vs State of Vindh-P
A I.R. 1954 S C. 322 : 1954 Cri. L.J. 910

(ii) It the money given as bribe is provided by a particular officer of the police then the evidence of all the witnesses does not become evidence of accomplices and be looked with suspicion.

Ramanlal Mohan Lal Vs The State of Bombay
A.I.R, 1960 S C. 961 : 1960 Cri. L.J. 1380

British System

"It is one of the inveterate principles of English law that a party cannot be compelled to discover that which, if answered, would tend to subject him to any punishment, peneltly, forfeiture or ecclesiastical censure." The Indian legislature was aware of this fundamental cannon of British Criminal Jurispru-

dence because in various sections of Cr.P.C. it gives effect to it.

State of Gujrat Vs Shyam Lal Mohan Lal
1965 S.C. 1251 : 1965 (2) Cri. L.J. 256

Brothel

It may be true that a place used once for the purpose of prostitution may not be a brothel, but it is a question of fact as to what conclusion should be drawn about the use of a place about which information had been received that it was being used as a brothel, to which a person does and freely asks for girls, where the person is shown girls to select from and where he does engage a girl for the purpose of prostitution. The conclusion to be derived from these circumstances about the place and the person 'keeping it' can be nothing else than that the place was being used as a brothel and the person in charge was so keeping it.

Krishnamurthy alias Tailor Krishnan Vs Public Prosecutor Madras
A.I.R. 1967 S.C. 567 (April Part) : 1967 Cri. L.J. 544

Burden

(i) Burden of proving that the statement of the accused was made under threat and duress is on the defence. The burden seeking to displace the statutory presumption lies on the person who questions it.

Bhagwan Singh Vs State of Punjab
A.I.R. 1952 S.C. 214 1952 Cri. L.J. 1131

(ii) The burden of proving the absence of good faith is upon the detenue and it is certainly a heavy burden to discharge.

Ashutosh Lahiry Vs The State of Delhi
A.I.R. 1953 S.C. 451

(iii) The burden of proving the case against the accused is on the prosecution irrespective of whether or not the accused have made out a plausible defence and has discharged the onus of alibi.

Gurcharan Singh Vs State of Pb.
A,I.R. 1956 S C. 460 : 1960 Cri. L.J. 827

(iv) The burden of proof that the mental condition of the accused was, at the crucial time, such as is described by section 84 of Penal Code lies on the accused who claims the benefit of this exemption.

State of Madhya Pradesh Vs Ahmadulla
A.I.R. 1961 S.C. 998 :

(v) The burden of proving lay upon the respondents defence that the importation and possession of the article was lawful in view of a licence issued under

(Burden-contd)

section 11 of Bombay Prohibition Act (25 of 1947), it was for them to produce the licence granted under that section. None such having been produced the defence is not available to the respondent.

State of Bombay Vs Narandas Mangilal Agarwal
A.I.R. 1962 S.C. 579 : 1962 (1) Cri. L.J. 512

(vi) As in England so also in India if an accused pleads an exception within the meaning of section 80 of the Penal Code, there is a presumption against him and the burden to rebut the presumption lies on him.

K.M. Nanavati Vs State of Maharashtra
A.I.R. 1962 S C. 605 : 1962 (1) Cri. L.J. 521

(vii) The appellant cannot be a citizen of India unless he was born in the territory of India and had his domicile in the territory of India at the commencement of the Constitution. In this case the appellant claimed to be citizen under Art. 5 (a) of the Constitution, but by reason of S. 9 of the Foreigners Act whenever a question arises whether a person is or is not a foreigner, the onus of proving that he is not a foreigner lies upon him.

Fateh Mohd. Vs The Delhi Administraiion
A.I.R. 1963 S.C. 1035 : 1963 (2) Cri. L.J. 55

(viii) Under the provisions of Sub section 3 of section 5 of the Prevention of Corruption Act, the burden on the prosecution to prove the guilt of the accused must be held to be discharged, If certain facts as mentioned there in are proved and then the burden shifts to the accused and the accused has to prove that inspite of the assets being disproportionate to his known source of income, he is not guilty of offence.

Sajjan Singh Vs The State of Pb.
A.I,R. 1964 S C. 464 . 1964 Cri. L.J. (1) 310

(ix) The burden of rebutting the presumption raised under the Prevention of Corruption Act, resting on the accused person in such a case would not be as light as it is where a presumption raised u/s 114 of Evidence Act and cannot be held to be discharged merely by reason of the fact that the explanation offered by the accused is reasonable and probable.

Dhameantrai Balwantrai Desai Vs State of Maharashtra
A.I.R. 1964 S.C. 575 : 1964 (1) Cri. L.J. 437

(x) Accused defending that he was domiciled in India and was residing in India when the constitution came into force. Burden is upon him and he should be given a chance to prove it.

Abdul Sattar Hali Ibrahim Patel Vs State of Gujarat
A.I.R. 1965 S.C. 810 : 1965 (1) Cri. L.J. 759

(*Burden- contd*)

(xi) Every one is presumed to know the natural consequences of his act. Similarly every one is presumed to know the law. These are not facts which the prosecution has to establish

There is no doubt that the burden of proving an offence is always on the prosecution and that it never shifts. It would, therefore, be correct to say that intention, when it is an essential ingredient of an offence has also to be established by the prosecution, but the state of mind of person can ordinarily be inferred from circumstances: This if a person deliberately strikes another with a deadly weapon, which according to the common experience of man-kind is likely to cause an injury and sometimes even a fatel injury depending upon the quality of the weapon and the part of the body on which it is struck, it would be reasonable to infer that what the accused did was accompanied by the intention to cause a kind of injury which in fact results from the act. In such a case the prosecution must be deemed to have discharged the burden which rested upon it to establish an essential ingredient of the offence, namely the intention of the accused inflicting a blow with a deadly weapon. Section 84 of the Indian Penal Code can no doubt be invoked by a person for nullifying the evidence adduced by the prosecution by establishing that he was at the relevant time incapable of knowing the nature of the act or that what he was doing was either wrong or contrary to law. Every one is presumed to the natural consequences of his act. Similarly every one is presumed to know the law. These are not facts which the prosecution has to establish. It is for this reason that S. 105 of the Evidence Act places upon the accused person the burden of proving the exception upon which he relies.

Note :—The appeal of the accused was dismissed and the sentence of death was confirmed. Plea of sanity was not proved by the defence.

Bhikari Vs. The State of Uttar Praderh
A.I.R. 1966 S.C. 1 . 1966 Cri. L.J. 63

Burden of Proof

(i) It was for the state to prove that the substance seized, if a medicinal preparation is not unfit for use as intoxicating liquor. The state has, even under the Bombay Prohibition act to establish that the respondents has infringed the prohibition contain in S. 12 and 13 of the Prohibition Act.

State of Bombay Vs Narandas Mangi Lal
A I R. 1962 S.C. 579 : 1962 (1) Cri. L.J. 512

(ii) Even if the accused was not able to establish conclusively that he was insane at the time he committed the offence, the evidence placed before the court by the accused or by the prosecution may raise a reasonable doubt in the mind of the court as regards one or more of the ingredients of the offences, inclu-

(Burden of Proof-contd)

ding mensrea of the accused and in that case the court would be entitled to acquit the accused on the ground that the general burden of proof resting on the prosecution was not discharged.

Mithoo Shahani Vs The union of India
A.I.R. 1964 S C. 1536 : 1964 (2) Cri L.J. 472

(iii) When the burden of an issue is upon the accused, he is not, in general called upon to prove it beyond a reasonable doubt or in default to incur a verdict of guilty, it is sufficient if he succeeds in proving a preponderance of probability; for then the burden is shifted to the presecution which has still to discharge its original onus that never shifts, i.e., that of establishing on the whole case, guilt beond a reasonable doubt.

If an exception is pleaded by an accused person, he is not required to justify his ples ; but the degree and character of proof which the accused is expected to furnish in support of his plea, cannot be equated with the degree and character of proof expected from the prosecution which is required to prove its case.

Harbhajan Singh Vs State of Punjab
A.I.R. 1966 S.C. 97 (Paras 14&15) 1966 Cri. L.J. 82

Bungling]

Except in clear cases of guilt, where the error is purely technical, the forces that are arrayed against the accsued should no more be permitted in special-appeal to repair the effects of their bungling than an accused should be permitted to repair gaps in his defence which he could and ought to have made good in the lower courts. The scales of justice must be kept on an even balance whether for the accused or against him, whether in favour of the State or not; and one broad rule must apply in all casses.

Machander Vs The State of Hyderabad
A.I.R. 1955 S.C. 792 : 1955 Cri. L J. 1644

Burat Edges

If there were burnt edges of the wound, the distance between the muzzle and the victim would only be a few inches and not more than nine inches. This opinion of ballistic expert is in substantial accord with text Book on medical jurisprudence.

Santa Singh Vs State of Punjab
A.I.R 1956 S.C. 526 : 1956 Cri. L J. 930

Bye Law

It is necessary for the proof of the Bye laws of the company that the original copy of the bye-laws bearing any mark of approval of the committee be produced.

R.K. Dalmia Vs The Delhi Administration
A.I.R. 1962 S.C. 1821 : 1962 (2) Cri. L.J. 805

(ii) When no standard in regard to Butter Milk contents is prescribed. reference from other standards cannot be drawn.

M. V. Krishan Nambissan Vs The State of Kerala
A.I R. 1966 S.C. 1676 : 1966 Cri. L.J. 1347

Chapter 'C'

Cancellation of bail

(i) In a proper case the High Court has inherent power U/s 561-A Criminal Procedure Code to cancel the order of suspension of sentence and grant of bail to the appellant made U/s 426 Cr.P.C. and to order that the appellant be re-arrested and committed to Jail custoday

Pampapthy Vs state of Mysore.
A I R 1967 S C. 286, 1967 Cri L.J. 287.

(ii) The appellant was released on bail under the orders of the Magistrate in a case under the Sea Custom Act and under sec 5 of the Imports and Exports Control Orders on May 11,1960 Both the offences are bailable. The High Court of Maharashtra in exercise of its inherent jurisdiction cancelled the bail orders and directed the appellant to surrender his bail

Held

The Criminal Procedure Code makes no provision for the cancellation of bail granted under sec. 496 Nevertheless, if at any subsequent stage of the proceedings it is found that any person accused of bailable offence is intimidating, bribing or tampering with the prosecution witnesses or is attempting to abscond, the High Court has power to cause him to be arrested and to commit him to custody for a such period. This jurisdiction of the High Court springs from the over-riding inherent powers of the High Court and can be invoked in exceptional cases only when the High Court is- satisfied that the ends of justice will be defeated unless the accused is committed to custody. The person committed to custody under this type of the order cannot ask

for his release on bail under sec. 496 Cr.P.C. but the High Court may by a subsequent order admit him to bail again

Ratilal Bhanji Mitham Vs. Assistant Collector of Custom. Bombay
AIR 1967 Supreme Court 1639 (NOV Part)

(iii) See .. ..*Bailable Offences*......A.I.R 1958 S.C 376, 1958 Cri L.J. 701

Cantonments Act

(i) The Magistrate acting under Section 259 of the Cantonment Act of 1924, acts as a persona designata and therefore, his order under that Section is not revisable under Section 435/439 of the Code of Criminal Procedure. So Sessions Judge and the High Court have no jurisdiction under these provisions to interfere. A I.R. 1962 S C. 574 relied upon

The Cantonment Board Ambala Vs. Pyare Lal.
A I.R. 1966 S.C.108, 1966 Cri L.J.93

Note :- This contention was not allowed to be raised at this stage i.e., before the Supreme Court :

(ii) The provisions of Section 259 of the Cantonment Act can be utilized for realisation of arrears of rent on land and building only if such rent is recoverable by a Board or a Military Estate Officer under the Act or the rules made thereunder. The word "recoverable" in the context obviously means "claimable", for Section 259 itself provides for the manner of recovery Therefore, action for recovery can be taken under Section 259 with respect to rent on land and buildings provided such rent is claimable by a Board under the Act or the rules framed thereunder.

The Cantonment Borad Ambala Vs. Pyare Lal.
A.I.R. 1966 S.C 108 (Para 5) 1966 Cri L.J.93

Card

Admission card enabling the accused to sit for the M.A. Examination has pecuniary value. This card is property with in the perview of S. 420 Penal Code.

Abhyaanand Mishra Vs. State of Bihar.
AIR 1961 S C. 1698 1661 (2) *Cri.L J.* 822

Cargo

The quantity of the gold carried by the accused while travelling in the air on his person could not be termed as personal luggage but was really cargo which had to be manifest and its value must have been entered in the air consignment note.

State of Maharashtra Vs. Mayer Hans George
AIR 1965 S.C. 722 : 1965 (1) Cri.L.J 641

Cattle Tresspass Act

(i) When a person seized cattle on the ground that they were trespassing on his land and causing damage to his crop or produce and gives out that he was taking them to the Pond, he commits no offence of theft, however mistaken he may be about his right to that land or crop. The remedy of the owner of the cattle so seized is u/s 20 of the act and is not justified in using force to rescue the cattle·

Ram Ratan Vs. the State of Bihar.
AIR 1965 S.C. 926 : 1965 (2) Cri.L.J. 18

(ii) The remedy of the owner of the cattle seized by an accused under the mistaken impression that the cattle were damaging his crop is to take action under section 20 of the Act He had no right to use force to rescue the cattle so seized and the accused had rightly caused grievous injuries to the owner who was armed with sharp edged weapon, in the right of his private defence.

Ramratan Vs the State of Bihar.
AIR 1965 S.C. 926 : 1965 (2) Cri.L.J. 18

Certified Copies

Under section 79 of the Evidence Act a court is bound to draw the presumption that a certified copy of a document is genuine and also that an officer signed it in the official character which he claimed in the said documents.

Bhinka Vs Charen Singh.
A I.R. 1959 S.C. 960 : 1959 Cri. L.J. 1223

Certificate

(i) Certificate of Fitness granted to one out of three only that can appeal under the certificate as' 'case' used in Art. 134 (1) (c) of the Constitution means case of each individual.

A.I.R 1954 S.C. 457
Nar Singh Vs State of Uttar Pradesh

(ii) The word certify indicates that the High Court must bring its mind to bear on the question, and, as in all cases of judicial orders and certificates, the reasons for the order must be apparent on the face of the order itself. The Supreme Court must be in a position to know first that the High Court has applied its mind to the matter and not acted mechanically and, secondly, exactly what the High Court's difficulty is and exactly what question of outstanding difficulty or importance the High Court feels this court ought to settle

AIR 1956 S C. 181 : 1956 Cri.L.J. 345
Baladin Vs. the State of Utter Pradesh

(Certificates-contd)

(iii) The Judges in doubt about facts at the time of granting certificate under Art. 134 (1) (c). Held, a certificate cannot be granted. The judges of the High Court should acquit

AIR 1956 S.C. 181 : 1956 Cri. L.J. 345.
Baladin Vs. State of Uttar Pradesh

(iv) In a case which does not involve substantial question of law on principle in an affirming judgment, the court would not be justified in granting a certificate under sub-article (C) of Artical 134 (1) of the Constitution.

Sunder Singh Vs. State of U P.
AIR 1956 S C. 411 1956 Cri. L.J. 801.

(v) A difficult question of fact wouldnot justify the grant of a Certificate under Art. 134 (1) (c) of the Constitution.

A I R. 1956 S.C. 411 . 1956 Cri L.J. 801.

(vi) When the certificate granted by the High Court under Article 134 (1) (c) is not justified the Supreme Court has to consider whether in the circumstance of the case it could have thought fit to grant special leave in terms of Art 136 (1) of the Constitution.

A.I R 1956 S C. 411 : 1956 Cri.L J. 801.

(vii) The High Court has no jurisdiction to grant a certificate under Article 134 (1) (c) of the constitution in a case where question of fact is involved but the Suppreme court Under Article 136 possess the power to interfere in a case involving a question of fact

Aher Raja Khima Vs State of Saurashtra.
A.I R. 1956 S.C. 217 : 1956 Cri.L J. 426.

(viii) Where the certificate granted by the High Court for leave to appeal to Supreme Court is defective, Supreme Court can grant special leave.

Pershadi Vs the State of Uttar Pradesh.
A.I.R 1957 S C. 211 : 1957 Cri.L.J. 328.

(ix) Where the certificate granted by the High Court does not satisfy the requirements of Art 134 (1) (c) the constiution the appeal or such certificate has to be dismissed in limine but their lordship of the Supreme Court has to satisfy themselves that there are not such grounds as would justify the Supreme court in granting special leave to appeal if the appellant would have approached to this Court.

Khushal Rao Vs the State of Bombay.
A.I.R. 1958 S C. 22 : 1958 Cri L.J· 106.

(x) Certificate under Art. 134 (1) (c) of the consititution cannot be granted by Division Bench of High Court which has not dismissed the appeal

A.I.R. 1958 S C 103 : 1958 Cri L.J 273

(xi) High Court cannot grant a certificate for leave to appeal to supreme court on a mere question of fact

Sidheswar Ganguly Vs the State of West Bengal.
A.I.R. 1958 S C 143 · 1958 Cri.L.J. 273

(xii) The certificate for leave to appeal to Supreme Court couldnot be based upon the omisson to discuss the First information report and doubts about it by the third judge The opinion of two judges was different so the case was referred to the third judge who did not discuss certain important points Held the third judge was competent to do the same

A I R. 1965 S.C. 1467
Babu Vs the State Uttar Pradesh.

(xiii) The power of High Court granting certificate under Article 134 (1) (c) of the Constitution is no doubt discretionary but inview of the word certifies' it is clear that such power must be exercised with great circumspection and only in a case which is really fit for appeal.

A.I R. 1965 S.C. 1467
Babu Vs the State of Utter Pradesh.

Challan

(i) Incomplete Challan u/s 173 (1) (a) Cr.PC. was put in, suplimentary filled subsequently. It does not necessarily vitiate the trial.

Tara Sing Vs the State.
A I R. 1951 S.C 441 : 52 Cri L J 1491.

(ii) Police did not make the report under S. 173 of the Criminal Procedure Code. It is of utmost importance that investigation into criminal offences must always be free from any objectionable features or infirmities which may legitimately lead to the grievance of the accused that the work of investigation is carried on unfairly or with any ulterior motive.
(Note : In case reported in 1960 S.C. 866 the objectionalbe conduct on the part of the Police officer couldnot help the appellant and the appeal was dismissed).

R. P. Kapur Vs State of Pb.
A.I R. 1960 S.C. 866 : 1960 Cri.L J. 1239.

(iii) Non-compliance with the provisions u/s 173 Cr P C. does not vitiate the proceedings and subsequent trial. The word shall occuring in S. 207A (3) and S. 173 (4) is not mendatory but directory.

Narayan Rao Vs State of Andhra Pradesh.
A.I R 1957 S C. 737

(iv) The object of Ss 162. 173 (4) and 207 A of Cr.P.C. is to enable the accused to obtain a clear picture of the case against him before the commencement of the inquiry The Sections imposes an obligation upon the investigating officer to supply before commencement of inquiry copies of the statements of the witnesses who are intended to be examined at the trial But failure to

furnish statements may not vitiate the trial in the absence of prejudice caused to the accaused

Noor Khan Vs State of Rajasthan.
AIR 1964 S,C. 286 : 1964 (1) Cri.L.J. 167.

(v) The charge sheet is hardly a complete or accurate thesis of the prosecution case Clause (a) of sub Section (1) of S. 173 Cr.P.C. requires the officer incharge of the Police Station to forward a report to the Magistrate empowered to take cognizance of the offencce on a police report in the prescribed form setting forth the names of the parties, the nature of the information and the names of the persons who appear tobe acquainted with the circumstances of the case

R K. Dalmia Vs Delhi Adminisration.
AIR 1962 S C 1821 1962 (2) Cri I J. 805

Challenge

(i) Article 358 of the Constitution makes it clear that things done or omitted to be done during the emergency cannot be challenged even after the emergency is over

Makhan Singh Vs the State of Pb.
AIR 1964 S C. 381 : 1964 (1) Cri L.J 269.

(ii) If Detention under Defence of India Act is not open to challenge by virtue of Presidential order under Article 359 (1) The proceedings under section 491 (1) (b) Criminal Procedure Code also cannot be challenged by virtue of the Presidential order.

Makhan Singh Vs the State of Pb.
AIR 1964 S.C. 381 . 1964(1) Cri.L J. 269.

Chance

Theburden of proving the domicile at the commencement of the constitution is on the accused. So he should be given an apportunity to prove the same.

Abdul Sattar Vs State of Gujarat
AIR 1965 S.C. 810 : 1965 (1) Cri.L.J. 759

Charge

(i) The charge of firing a shot at K and J with rifle with the intention of causing death and thereby committing an offence punishable u/s 307 I.P.C. is not a charge with respect to two offences but is a charge with respect to one offence only. Single act of firing by the appellant is only one offence.

Bhaga Singh Vs the State.
AIR 1952 S C 45 :1952 Cri L J. 323.

(ii) The accused was acquitted on the charges of murder conspiracy and kidnapping, his conviction on the charge that some twelve hourse after the crime he assisted in removing the body from the scence of occurance i e u/s 201 I.P.C. without further charge is not illegal.

Kashmira Singh Vs the State of Madhya Pradesh.
A.I.R. 1952 S.C. 159

(*Charge-contd*)

(iii) Where there was no charge u/s 302 readwith 34 Penal Code, the conviction of the appellants u/s 302 readwith 149 can be altered by the High Court to one u/s 302 read with 34 upon the acquittal of the remaining accused as on the facts the accused could have been charged alterortively either u/s 302 read with 149 or u/s 302 read with 34 of IPC.

Lachhman Singh Vs The state
A.I.R 1952 S.C. 167, : 1952 Cri. L J. 863

(iv) Where it was open to the Session Judge to charge the appellant alternatively u/ss 307 or 326 Penal Code, the appellant's conviction u/s 326 Penal Code is proper even in the absence of charge

Bejoay Chand Vs State of west Bengal.
A.I.R. 1952 S.C. 105. 1952 Cri. L.J 644

(v) A charge u/s 5 (1) (a) of the prevention of corruption Act without particulars is not wrong as no particulars need be set out in the charge of the offence u/s 5 (1) (a). This offence is not consist of individual acts of bribe taking as in Section 161 of the Penal Code but is of general character,

Biswabhusan Naik Vs Tne State of Orissa.
A.I.R. 1954 S.C. 359 : 1954 Cri L J. 1002.

(vi) A mere imperfection in the charge cannot be used to over throw a conviction unless prejudice can be shown. This irregularity is curable both under Section 225 and S 537 of the Cr P. C.

Moti Dass Vs The state of Bihar.
A.I.R. 1954 S.C. 657 : 1954 Cri. L.J. 1708.

(vii) SupremeCourt would require strong reasons for using section 149 Penal Code when it is not made applicable in the charge even if it be possible to convict under that section in the absence of a specific charge.
(Note : in case reported in 1955 s.c. 216 the conclusion of a common object was not drawn even if one has already been charged u/s 149 IPC).

Pandirang Vs the State of Hyderabad.
A.I.R. 1955 S.C. 216 : 1955 Cri. L J. 572.

(viii) If there is a conviction for a charge not framed it is an illegality and not irregularity curable by the provisions of Section 535 or 537 Cr P. C.
(Note : Case was sent back for retrial after framing a charge u/s 302 I P.C.

A.I.R. 1955 S.C. 274 : 1955 Cri. L J. 721.

(ix) The police did not commit themselves as to who out of the members of the unlawful assembly was the author of the Pistol fire The presence of only those accused should be held to have been proved who have been assigned definite part by the prosecution or whose presence has been corroborated. There was no sufficent evidence to convict the appellant for committing murder as there were no direct and specific charge against tne appellant accused.

Suraj Pal Vs the State of Uttar Pradesh.
A.I.R. 1955 S.C. 419 : 1955 Cri. L.J. 1004.

(*Charge-contd*)

(x) The omission to frame a charge is a grave defect and should be vigilantly guarded against. In some cases, it may be so serious that by itself it would vitiate the trial and render it illegal, prejudice to the accused being taken for granted.

A.I R. 1956 S C. 116 : 1956 Cri. L.J 291.

(xi) There is no violation of S. 234 of the Cr. P. Code when the appellant has been charged with three offence u/s 409 and one u/s 477-A Penal Code Case is governed by S. 235 of the Criminal Procedure Code as the several offences u/s 409 and 477-A arise out of the same act and form part of the same transaction.

Chandi Prasad Singh Vs the State of Uttar Pradesh.
A.I R. 1956 S.C. 149 1956 Cri. L.J. 322.

(xii) The omission to mention S. 34 Penal Code in the charge has only an academice significance and does not in any way mislead the accused.

Rawalpenta Venkal Vs the State of Hyderabad.
A.I.R 1956 S.C. 171 : 1956 Cri. L J. 338.

(xiii) The complaint on the score that the charge was not according to law and has prejudice the appellant in their defence as that each accused has not been told separately what offence he is being tried for and they have all been lumbed together as follows —

"The aforesaid offences having been proved by the evidence adduced by the prosecution, you the accused 1-29 have committed offences punishable under——"Their lordships were satisfied that the body of the charge set out the fact that the accused 1-29 formed an unlawful assembly and stated the common object, and then the charge specified in detail the part that each accused had played. In the circumstances, each accused was in a position to know just what was charged against him because once the facts were enumerated the law that applied to them could easily be ascertained and in this particular case it was just a matter of picking out the relevant sections from the mentioned. S 225 Cr. P. C. expressly covers this kind of case. The charge did not cause prejudice to the accused

K. C. Mathew V s. the State of Travancore Cochin
A.I.R. 1956 S.C. 241 · 1956 Cri L.J 444.

(xiv) The charge framed was one of murder and robbery and there was no mention of those offences having been committed in the furtherance of a common intention. The appellant can be convicted by the application of the provisions of S. 34, Indian Penal Code, even if the co-accuseds of the appellant were acquitted but the evidence should be sufficient to support the charge of common intention.

Wasim Khan Vs the State of Uttar Pradesh.
A I R 1956 S C 400 : 1956 Cri. L.J. 790

(xv) The omission to mention the name of the approver in the charge u/s 120-B

(*Charge-contd*)

Penal Code is curable when it has not misled the appellant or has not occasioned a failure of justice.

Bumbadhar Pradhan Vs the State of Orissa.
A.I R. 1956 S.C 469 1956 Cri. L J. 831

(XVI) In charge u/s 396 IPC the accused can be convicted u/s 302 IPC as the charge of dacoity with murder i e 396 IPC includes murder also.

Shyam Behari Vs the State of Uttar Pradesh
A.I R. 1957 S. 320 : 1957 Cri. L.J 416.

(XVII) Two alternative charges in the same trial There can be acquittal in one and conviction in another

State of Madhya Pradesh Vs Veereshwar Rao Agnihotri.
A.I.R 1957 S C. 592 : 1957 Cri. L J. 892.

(XVIII) A conviction u/s 420 I.P.C. would be valid though the charge is u/s 420 read with S. 34 IPCunless prejudice is shown to have occured

Mobarik Ali Ahmed Vs the State of Bombay.
A.I R. 1957 S.C 857 : 1957 Cri. L. J. 1346.

(XIX) No separate charges as required by S 233 of Cr.P.C were framed u/ss 120-B, 224/109 of the Indian Penal Code and S. 5 (2) of the Prevention of Corruption Act. This irregularity was cured by the Provisions of S. 537 of the Criminal P Code further more no prejudice was caused as this objection was abandoned by the Advocate for the accused in the Trial court.

Kanta Prashad Vs the Delhi Administration.
A.I.R. 1958 S.C. 350 : 1958 Cri L.J. 698.

(XX) The omisson to mention S. 34 of the Penal Code in the charge cannot affect the case unless prejudice is shown to have resulted in Consequence thereof

B.N. Srikantiah etc Vs the State of Mysore.
A.I.R. 1958 S.C. 672 : 1958 Cri. L.J. 1251.

(XXI) The failure of the charge under Cl. (a) of Sub Section 1 of S. 5 does not necessarily mean the failure of the charge u/s 5 (1) (d) of the prevention of Corruption act.

C.S D. Swoami Vs. the State.
A.I.R. 1960 S.C. 7, 1960 : Cri. L.J. 131.

(XXII) The presidency magistrate wrongly framed the charge when in respect of the offence charged there was no complaint filed and the facts as stated in the complaint actually filed did not make out the offence as charged. Procedure of S. 198 of the Creminal Procedure Code is mandatory. The magistrate could not have recorded an order of acquittal. The magistrate should refer the case to the High Court for correcting the error.

(Note : the Supreme Court dismissed the complaint and exercised the powers

(*Charge-contd*)

which High Court would have exercised).

Abdul Rehman Mahomed Yasuf Vs Mahomed Haji Ahmad Agbotwala.
AIR. 1960 S.C. 82 : 1960 Cri. L.J. 158.

(XXIII) In the absence of any prejudice caused to the appellant by reason of the defect, if any, in the charge as to the intent of the appellant, the conviction u/s 506 Penal Code can not be set aside

Ramesh Chandra Vs The state.
AIR 1960 S C. 154 : 1960 Cri. L.J. 177.

(XXIV) A mere error, omission or irregularity in the charge will not invalidate the finding as a matter of law in the absence of prejudice No Complaint in the supreme Court can be made of any defect in the charge.

Bhaiwad Mepa Dana Vs state of Bombay.
AIR 1960 S C. 289 :1960 Cri L J. 424.

(XXV) When a case is covered by the provisions of Sections 236 and 237 Cr.P.C. the appellate court errs in ordering a retrial. Instead it should itself dispose of the appeal, the court can convict for an offence even with which he had not been charged.

G D Sharma Vs The state of Uttar Pradesh
AIR 1960 S.C 400 : 1960 Cri. L.J. 541.

(XXVI) The charge framed u/s 467 of Penal Code for making entries of false and imaginary sale notes in the transport permit. The permits entries may not amount to the falsefication of accounts but the entries made therein were false so 477 A IPC has been contravened.

G D. Sharma Vs The state of Uttai Pradesh
A I R. 1960 S.C. 400 : 1960 Cri.L .J. 541.

(XXVII) There is no illegality in finding the appellants guilty of offences u/s 409 of the Penal Code when the charge framed against them was one u/s 409 read with 34 of the Penal Code.

Jaikrishnadas Manohardas Desai Vs The state of Bombay.
AIR 1960 S.C 889. 1960 Cri.L J. 1250.

(XXVIII) Charge of criminal conspiracy with an offence punishable with R.I. for two years be committed described in the alternative. Such a charge was held justified u/s 236 of the Cr.P C.

Paiushottamdas Vs The State of west Bengal.
AIR 1961 S.C. 1589 : 1961 (2) Cri L.J. 728.

(XXIX) The contravention of the provisions of Sub Section (2) of S. 222 of the Code, in the framing of the charge will not always makethe trial void. The charge framed in the present case was with respect to the gross sum-embezzled within a period of more than twelve months, the period being between March, 1949 and June 30, 1950. The charge is in contravention of the Provisions of S 222 (2) of the Code This defect in charge, however, **did not lead to any prejudice** to the accused and so trial is not vitiated in view of the provisions of S 537 of the Criminal Procedure Code.

The State of Bombay Vs Umaisaheb Baiansaheb Inamdai.
AIR 1962 S.C. 1153 : 1962 (2) Cri. L.J. 259.

(*Charge-contd*)

(XXX) The Vagueness of the charge would note make the trial illegal, especially when no prejudice was caused to the accused.

R K Dalmia Vs The Delhi Administration.
AIR 1962 S C. 1821 : 1962 (2) Cri L J 805.

(XXXI) The failure to refer in the charge to other members of the unlawful assembly un-named and unidentified may conceivably raise the point as to whether prejudice would be caused to the person before the Court.

Mohan Singh Vs The State of Punjab.
AIR 1963 S.C 174 : 1963 (1) Cri L J. 100

(XXXII) Misjonder of charges is saved by S. 537 Cr. PC if no failure or justice has been occasioned to the accused.

Birichh Bhuian Vs The State of Bihar.
AIR 1963 S C. 1120 1963 (2) Cri.L J. 190

(XXXIII) One charge was framed u/s 406 I P. C. with respect to dealing with several books of accounts. It was held that the books found as one set of account books of the estate, were found together in two locked boxes, the key being with the appellant. It was not "accepted that a separate offence was committed with respect to each of the books "

Banwari Lal Jhunjhunwala and others Vs union of India
AIR 1963 S C. 1620 (1625) reference from 17 Ca W. 479

(XXXIV) It cannot be held that because a period of four or five or six days is indicated in the charge within which the offence is alleged to have been committed section 222 (1) of Cr. P. C. has been contravened because particular date or time is not mentioned in charge

Chittaranjan Dass Vs State of West Bengal.
A.I R. 1963 S. C. 1696 · 1963 (2) Cri L.J. 534.

(XXXV) The Supreme Court did not see anything wrong in the trial of several persons accused of offences u/s 120-B and S. 420 Indian Penal Code.

If the alleged offences are said to have flown out of the conspiracy, the appropriate form of charge would be a specific charge in respect of each of those offences alongwith the charge of conspiracy.

The State of Andhra Pradesh Vs Cheemalapati Ganeswara Rao.
A.I.R 1963 S.C. 1850 · 1963 (2) Cri L.J. 671.

(XXXVI) Where the public servant is not specified in the charge that would only mean that there is a defect in the charge and such a defect would be curable u/s 537 of the Code of Criminal Procedure unless such error, omission or irregularity or misdirection has in fact occasioned a failure of justice.

(Note : This case was distinguished with the case of Shiv Lal's 1959 S.C 847 as here accused was serving in the same department while in Shiv Lal's case the accused was not in the same office.).

The State of Maharashtra Vs Jagat Singh Charan Singh.
A.I.R. 1964 S.C. 492 : 1964 (1) Cri.L.J. 432.

(*Charge-contd*)

(XXXVII) Where a person is a public servant in the very office where the appointment is to to be made takes money in order to get the appointment made, there is no further question of charge or evidence indicating who was the other public servant with whom the service would be rendered.

The State of Maharshtra Vs Jagat Singh Charan Singh.
A.I R 1964 S.C. 492 · 1964 Cri L.J. 432

(XXXVIII) Where the charge is under S 161 I.P.C., the charge should specify the other Public Servant who was to be approached for rendering service or dis service. If the other public servant is not specified in the charge the trial would be bad.

The State of Ajmer Vs Shivji Lal.
A.I R 1959 S C. 847

(XXXIX) A charge of having committed a contempt of court is a charge of having committed an offence within the meaning of section 211. IPC

Hari Dass Vs the State of West Bengal.
A.I.R 1964 S C 1773 : 1964 (2) Cri. L J. 737.

(XXXX) When a charge under S. 420 I P C could have been framed by the trial court by virtue of S 236 Cr P. C that court or the appellate court can, in law, convict the appellant of this offence instead of an offence u/s 409 I.P.C. if it be of the view that the offence of cheating had been established. This would be in accordance with the provisions of S 237 Cr. P. C.

Sunil Kumar Paul Vs the State of West Bengal.
A.I R 1965 S C 706 1965 (1) Cri. L.J. 630

(XXXXI) Sub Section 2 of section 222 Cr. P C. is an exception to meet certain contingency and is not the normal rule with respect to framing of a charge in cases of criminal breach of trust It is only when it may not be possible to specify exactly particular items with respect to which criminal breach of trust took place or the exact date on which the individual items were misappropriated or in similar contingency, the court is authorised to lump up the various items and to mention the total amount misappropriated within a year in the charge

Ranchhod Lal Vs State of Madhya Pradesh
A.I.R 1965 S C 1248 : 1965 (2) Cri. L J 253

(XXXXII) It is not obligatory to charge a person under Section 147 or 148 Indian Penal Code before Section 149 I. P. C can be utilized. If a person is not charged under Section 147 I P C. it does not mean that Section 149 I P.C cannot be used. Sections 143, 146, 147 & 148 are implied when Section 149 I. P. C is applied on the facts of the case.

Mahadeve Sharma & Others Vs State.
A I R. 1966 S C. 302 : 1966 Cri.L J 197.

Charge

(XXXXIII) When the Magistrate does not frame a charge which is exclusively triable by

(Charge-contd)

the court of Session when evidence prima facie discloses that offence and acquits th accused in the other charges, the Magistrate acted without jurisdiction, he is to charge the accused with that charge and commit the accused to the court of Session It is not proper for magistrate to choose for trial only such offences over which he has jurisdiction.

Note .-In this case the accused prima facie committed an offence u/s 467 I.P.C. along with offences u/ss 420/468/406 I P.C. but was not charged with that cf an offence u/s 467 I.P.C. The case was remanded to the Court of Session, after setting the order of acquittal aside, and the case U/S467./420/468,4061 IPC was committed to the court of Session.

Matnkdhari Singh Vs Janardan Prasad.
A.I R. 1966 S C. 356. 1966 Cri.L J. 307.

XXXXIV By charging the accused u/s 302 I P.C. read with 149, the accused appellant cannot be convicted for an offence of murder i e , 302 for which he (appellant) had not been charged
A.I.R. 1955 S.C 274 & A.I.R. 1955 S.C. 419 referred)

Lakhan Singh Vs State of Bihar.
A.I R. 1966 S C 1742 1966 Cri.L J. 1349

Charge sheet

(i) The charge sheet is hardly a complete or accurate thesis of the prosecution case. Clause (a) of sub section (1) of S. 173 Cr P C, requires the officer incharge of the Police Station to forward a report to the Magistrate empowered to take coghizance of the offence on a police report in the prescribed form setting forth the names of the parties, the nature of the information and the names of the persons who appear to be acquainted with the circumstances of the case.

R K Dalmia Vs the Delhi Administration
A I R. 1962 S.C. 1821 : 1962 (2) Cri I J. 805

(ii) Where the information discloses a cognizable as well as a non-cognizable offence. the police officer is not debarred from investigating any non-cognizable offence which may arise out of the same facts He can include the non-cognizable offence in the chargesheet which he presents for a cognizable offence A police investigated an offence u/s 7 of Essential Supplies Act along with section 420 I P C The trial could proceed for the said offence u/s 251 A Cr. P C. and the investigation is valid

Provin Chandra Mody Vs State of Andhra Pradesh.
A.I.R 1965 S.C 1185 · 1965 (2) Cri.L J 250 (Aug. Part).

(iii) R. appellant name's was mentioned in colum No· 2 of the charge-sheet under the heading 'not sent up'. Magistrate first refused to summon R but after the transfer of the case to an another Magistrate the appellant was summoned after the recording of P.Ws.

Held: —The accused appellant could be summoned and that once cognisance has been taken by the Magistrate, he takes cognizance of an offence and not the offenders; once he takes cognizance of an offence it is his duty to find out who the offenders really are and once he comes to the conclusion that apart from the person sent up by the police some other persons are involved, it is

his duty to proceed against those persons. The summoning of the additional accused is part of the proceeding initiated by his taking cognizance of an offence.

Reghbubans Dubey Vs state of Bihar
A.I R 1967.S C 1167 (August Part), 1967Cri.L.J. 1081, 1967 S.C D 455

Character

(i) In criminal proceedings a man's character is often a matter of importance in explaining his conduct and in judging his innocence or criminality. On the question of punishment an accused is allowed to prove his general good character

Haeeb Mohammed Vs The State of Hyderabad.
A I.R. 1954 S C 51 · 1954 Cri.L J. 338.

(ii) The character evidence is very week evidence, it cannot out weigh the positive evidence in regard to the guilt of a person

Bhagwan Swarp Vs state of Mahrashtaa
A I R. 1965 S.C. 682 : 1965 (1) Cri.L J. 608.

Cheating

(i) That if the Appellant had at the time he promised to pay cash against delivery and had intention to do so, the fact that he did not pay would not convert the transaction into one of cheating But if on the other hand he has no intention whatsoever to pay but merely said that he would do so in order to induce the complainant to part with the goods then a case of cheating would be established

Mahadeo Prasad Vs State of west Bengal
A.I R. 1954 S C 724 · 1954 Cri L J. 1806.

(ii) If the public servant who received the money takes it by holding that he will render assistance to giver"with any other public servant" and the giver gives the money under that belief It may be that the receiver of money is in fact not in a position to render that assistence and is aware of it· He may not even intended to do so He may accordingly be guilty of cheating. None the less he is guilty of the offence u/s 161 I.P.C.

Mahesh Prasad Vs. State of Uttar Pradesh
A I R 1955 S.C 70 1955 Cri. L J. 249.

(iii) If a specific instance of cheating was proved beyond doubt against any of the accused that would furnish the best corroboration of the offence of conspiracy because conspiracy was the root and the specific instances were the fruit. (Note The conviction of the appellant u/s 120 (B) and S 420 IPC was held justified)

S Swaminathanm Vs The State of Madras
A.I.R. 1957 S.C 340 1957 Cri. L.J. 422.

(iv) Some offences cannot be regarded as having been Committed by Public servant while acting or purporting to act in the discharge of his official duty, for instance, acceptance of a Bibe and the offence of cheating or abetment thereof

K Satwant Ssngh Vs. state of Punjab
A.I R. 1960 S.C 266 : 1960 Cri.L.J. 410.

(*Cheating-contd*)

(v) Where a public servant commits the offence of cheating or abets another so to cheat. the offence committed by him is not one which he is acting or purporting to act in the discharge of his official duty, as such offence has no necessary connection between it and the proformance of the duties of public servant, the official status furnishes only the occssion or opportunity for the commission of the offence. So sanction is notrequired to prosecute.

A.I.R. 1960 S.C. 266 : 1960 Cri.L.J. 410
K Satwant Singh Vs The State of Pb

(vi) Admission Card enabling the accused to sit for the M.A. Examination has pecuniary value This card is property within the perview of S. 420 Penal Code.

Abhayanand Mishra Vs The State of Bihar.
A.I.R. 1961 S.C. 1698 . 1961 (2) Cri. L J 822

(vii) It is enough to establish the existence of one out of the wrongful loss and wrongful gain. The law does not require that for the purpose of cheating both should be established.

Tulsi Ram and others Vs. The state of Uatter Pradesh
A.I.R. 1963 S C. 666 : 1963 (1) Cri L.J 623.

(viii) The accused falsely represented that he held the degree of M.B.B S of certain University as necessary qualification required for the post. The Public Service Commission interviewed him and selected him for the post He was appointed by the Government and drew pay for many years when the fraud was detected.

The conviction for the offence of cheating u/s 419 I.P.C. was correct as the accused dishonestly induced the Government to deliver property to him and thus committed offence of cheating under the first part of section 415 I P C. Accused misrepresented the public service commission by representing him to be an M.B.B S. He was appointed by the Government and served efficiently and obtained good reports from his departmental superiors. So there was no likelyhood of causing any damage to the reputatian of Public Service Commission by such appointment the accused had not committed the offence of cheating as defined in the latter part of S. 415 IPC.

Kanumukala krishnamurthy Vs The State of Andhra Pradesh.
A.I.R. 1965 S.C. 333 : 1965 (1) Cri. L.J 355 .

(ix) The appellant presented the bill for Rs. 1763-6-o at the State Bank purporting to act as the clerk of the Sub Division Health Officer. The Bank made the payment to him as the messenger of that officerduly authorised to received payment in-cash It follows that the offence under S. 420 committed by the appellant would be committed by him as public servant purporting to act as such, and that a case invloving this offence also could have been alloted to the Special Court by the State Government for trial.

Sunil Kumar Paul Vs the State of west Bengal.
A I.R. 1965 S.C. 706 : 1965 (1) Cri. L J 630.

(Cheating-contd)

(x) Payments were sanctioned by the Burma Government and were made only after reports had been obtained from their own officers on the claims which had been put forward by the appellant; but the payments were made only because the appellant had submitted those claims in the first instance. The representations made by the appellant in the written claims contained in the bills were the basis of all subsequent proceedings which resulted in payments being made to him Those representations contained bogus claims and orders for payment were based on those very claims The officers who verified the claims wrongly could certainly be held guilty of abetting the appellant by supporting his false representations. It cannot be said that the payments that were made to the appellant were not connected with inducement by the representations made by the appellant himself in his bills In fact, primarily. it were those representations by the appellant which ultimately culminated in the Government of Burma for parting with the money to satisfy those claims put forward by the appellant.

Note It is not simple cheating U/S 417 IPC but is chesting U/S 420 IPC.

Bakhshish Singh Dhaliwal Appellant Vs. The State of Punjab Respondent.
A I R. 1967. S C. 752 (May Part) 1967 Cri L.J. 656,69 PLR 107 1967 All Cri R 79

(xi) It is not necessary that a false pretence should be made in express words by the appellant. It may be inferred from all the circumstances including the conduct of the appellant in obtaining the property and in Ex. P. 34 (a) the appellant stated something which was not true and concealed from P.W.2 the fact that he was not a member of any recognised association and that he was not entitled to carry on the forward contract business. It is clear that P.W.2 would not have parted with the sum of Rs 12,000 but for the inducement contained in Ex P 34 and the representation of the appellant that he could lawfully carry on forward contract business

So the appellant accused has been rightly convicted u/s 420 I. P. C.

Shivanaryan kabra Vs. The State of Madras.
A.I.R. 1967 S.C. 986 (July Part), 1967 Cri LJ 947

Chemical Analysis

Only one bottle out of the articles recovered at the raid was sent for analysis and it was not proved that all the bottles and the drums recovered contained rectified sprit. Held it is wholly unnecessary to send all the bottles recovered by the police in the presence of panches which contain the same stuff for the purpose of Analysis

Vijendrajit Ayodhiya Prasad Goel Vs. The State of Bombay
A I R 1953 S.C 247 · 1953 Cri. L.J 1097.

Chemical Examiner

The Chemical Examiner's duty is to indicate the number of blood stains on each exhibit Merely to say that blood was detected is not enough.

Nathu Vs. The State of Uttar Pradesh
A.I.R. 1966 S.C. 51 1966 Cri.L J. 147

(Chemical Examiner-contd)

(ii) The Legislature has made the certificate of the examination u/s 129 A sub-Section (1) and (2) of the Bombay Prohibition Act admissible without formal proof but by sub section (8) of 129 A the adoption ofanyother method of collection of evidence for proving that a person accused consumed an intoxicant is not precluded and a report of any registered medical practitioner is also admissible u/s 129 B. which tends to establish that fact specified in this clause.

Ukha Kohle Vs The State of Maharashtra
A.I.R. 1963 S.C.-1531 · 1963 (2) Cri. L.J 418

(iii) A Report of the Chemical Examiner u/s 510 Cr. P. C is not precluded by ss 129 A and 129 B of the Bombay Prohibition Act.

Nathu Vs. The State of Uttar Pradesh
A.I R. 1956 S C. 51 1956 Cri. L.J. 147

Cheque

Note : See Blank cheque

Circumstances

(i) There should be strong and compelling reasons for setting aside the order of acquittal as after acquittal the presumption of innocence in favour of the accused is further re-inforced and that order can be reversed not on the ground that accused had failed to explain the circumstances appearing against him.

Ajmer Singh Vs. The State of Pub.
A.I.R. 1953 S.C. 76 : 1953 Cri. L. J. 521

(ii) On the evening of the day in question, all the four accused had gone to the house of the deceased and accosted him, asking him to accompany them to the well. There was evidence of ill-will between the deceased and the accused, in that the accused were alleged to have abducted the deceased. There were certain at the recoveries of the silver ornamennts which were worn by the deceased, at the instance of one accused. Further the dead body was found hanging in the back yard of the house of the accused Held these circumstances, by themselves are not enough without anything more to connect the accused with the crime.

Note—the appeal was allowed and the accused were acquitted.

A.I.R. 1656 S. C. 316 : 1956 CRi. L J. 559

(iii) The appellant stated to the police, "I have thrown him in the Bhaar furnace." The statement was made in anger immediately after the deceased was found missing. This is a circumstance which is consisent with the guilt of the accused even though the body was not found in the furnace but in the well.

Note the appeal was dismissed

Pershadi Vs. state of Utter Pradcsh
A.I R. 1957 S.C. 211, 1957 Cri L J. 328

(iv) The fact that the appellant hid the clothes of the deceased clearly indicates his guilty knowledge and is consistent only with his having murdered the deceased.

Pershadi Vs State of Uttar Pradesh
A.I.R. 1957 S C. 211 · 1957 Cri. L.J. 328

(v) Merely because son used a pistol and caused the death of another at the instance of his father is no mitigating circumstance which the courts would take into consideration.

Mizaji Vs. State of U.P.
A.I.R. 1959 S.C. 572 : 1959 Cri. L. J. 777

Circumstantial Evidence

(i) As a matter of prudence and caution it was held not to convict an accused person on oral evidence unless there are some circumstances to lend support to the evidence of the eye witnesses. The corroboration is not of the kind which one requires in the case of the evidence of an approver or an accomplice but corroboration by some circumstances which would lend assurance to the evidence before the Judges and staisfy them that particular accused is really concerned in the murder of the deceased

Note · The corroboration from circumstances was found so the appeal was dismissed.

Lachhman Singh Vs. The State
A.I.R. 1952 S C. 167 : 1952 Cri L J. 863

(ii) On the date of the occurrance an hour before sun set the accused was seen with the deceased The accused was witnessed by two ladies proceeding with the deceased to the scence of occurrence but coming alone. Naulis of the deceased which she was wearing were recovered from the decased. Held that the circumstantial evidence in the case wase only consistent with the guilt of the accused so the appeal is dismissed.

Nisa Stree Vs. The Srate of Orissa
A.I R. 1954 S.C. 279 : 1954 Cri. LJ. 743

(iii) A case which dependsupon on the conclusions drawn from circumstances, it is well settled that the cumulative effect of the circumstances must be such as to negative the innocence of the accusad and to bring the offences home to him beyond any reasonable doubt.

Bhagat Ram Vs The Stute of Punjab.
A.I.R. 1954 S C. 621 : 1954 Cri. L J. 1615

(iv) Before a person could be found guilty with refernce to mere circumstantial evidence, each of the circumstance relied upon must be clearly established and the proved circumstances taken together must be such as reasonably to exclude the probability of innocence.

Keder Nath Vs. The State of West Bangal
A.I.R 1954 S.C. 660 . 1954 Cri. L J. 1669

(v) Accused and the deceased were seen together at 2 P M. on the day of occurrance and immediately the accused went to dispose of the ornaments. Ornaments were established to be the ornaments worn by the deceased and the accuseded was not in **a position to give any satisfactory explanation as to how he came to be in possession** of the same on the very same day i.e. on the day the murder was committed, The circumstantial evidence therefore was sufficient to hold the accused responsible for the murder of the deceased.

Sunder Lal Vs. The State of Madhya Pardesh
A.I R. 1954 S C 28 · 1954 Cri. L J. 257

(Circumstantial Evidence-contd)

(vi) When there is no direct evidence and the whole case turns on circumstancial evidence, it is well settled that circumstancial evidence should not only be consistent with the guilt of the accused but should be inconsistent with his innocence.

(Note :—In the present case only two persons appellant and the peon R could do the forgery and embazzlement and it is proved that R has not done then the appellant only is responsible for the act. Accused capacity to do the forgery and the opportunity to do the same were foundsufficient to prove the guilt.

Mangleshwari Prasad Vs. The State of Bihar
A.I.R. 1954 S C. 715 : 1954 Cri. L J. 1797

(vii) If the old woman died a natural death, the first thing which one would have expected from the appellant with whom the old lady was living was to have informed the son-in-law and the grand son of the old woman about her death and asked them to arrange for the cremation of the dead body. This circumstance is inconsistant with the innocence of the accused. And further the appellant insisted for cremation as early as possible also show that he was aware of the manner, in which the old woman met her death and was anxious to dispose of the dead body so as to avert any suspicion or proof of her having met with unnatural death.

(Note : The conviction and the sentence of death was upheld).

Kutuhal Yadev Vs. state of Bihar
A.I.R. 1954 S.C. 720, 1954 Cri. L.J. 1802

(iii) The circumstances :

1 That the appellant knows that the deceased M. had attended the court at Parenda on the 16th and that he had seen him there but when questioned about it he told a lie.

2 That thirteen days after the murder he knew that M had been murdered. He also knows where the murder had been committed and where the body and certain articles belonging to the deceased were hidden.

3 That there was ill-will between them, but an ill-will that other members of the appellant's family might be expected to share.

4 That he had full opportunity to commit the crime but the same kind of opportunity that the other members of his family also had.

Held, these circumstances are not sufficient to warrant a conclusion of murder by the appellant as these circumstances can be said to point with equal suspicion at other members of the appellants family.

(Note :-The-circumstances were held insufficient and the appeal was allowed.)

Machandei Vs. The State of Hyderabad
A.I.R. 1955 S.C 792 : 1955 Cri. L.J. 1644

(*Circunstantial Evidence-contd*)

(ix) In the case of circumstantial evidence, the circumstances must be established and the chain of evidence furnished by these circumstances should be so complete as not to leave any reasonable ground for a conclusion consistant with the innocence of accused.
(Note :-The chain was found complete and the appeal was dismissed).

Peonandan mishra Vs. The state of Bihar
A.I.R. 1955 S.C. 801, 1955 Cri. L J. 1647

Circumstances and Recoveries of Common Use

(x) There were recoveries of the silver Kardoda at the instance of the accused No. 2 a white turben and a stick from the house of accused No. 3. The silver Kardoda alleged to have been removed from the person of the deceased was burried in a secluded spot which was pointed out by accused. HELD no charge of murder could certainly be entertained against him by reason of such recoveries as silver Kardoda was an article in common use by the people. The accused No. 2 could be in the know of silver Kardoda after it had been removed from the person of the accused by who-so-ever was responsible for doing the deceased to death. Evidence is not sufficient to hold the accused guilty.

Eradu and others Vs. state of Hydrabad
A.I.R. 1956 S.C. 316 : 1956 Cri. L.J. 559

(xi) The circumstances from which the conclusion of guilt is to be drawn should in the first instance be fully establis ed and all the facts so established should be consistent only with the hypothesis of the guilt of the accused
The cumulative effect of the circumstantial evidence found by the Courts, particularly in view of the unacceptable explanation given by appellant No. 1 for the presence of blood stains on his Pajama and his failure to give any explanation in regard to the possession of the stolen goods a few days after the incident, leave no doubt in the minds of the Judges that the hypothesis suggested, namely, that appellants 2 and 3 might have committed the murder and given to appellant No. 1 a portion of the spoils, is more fanciful than real. In this particular case, the facts found are not capable of explanation upon any other hypothesis than that the first appellant participated in the commission of the offence of murder and robbery.

Goreinda Reddy Vs. The State of Mysore
A.I.R. 1960 S.C. 29 . 1960 Cri.L.J. 137

(xii) If the cicumstantial evidence, in the absence of direct proof of three elements required in poisoning case, is so decisive that the court can unhestitatingly hold that death was the result of the administration of poison and the same must have been administered by the accused, then the conviction can be rested upon it
Note : By the Majority view the appeal was dismissed.

Anant Chintannan Lagu Vs. The State of Bombay
1960 S.C 500 : 1960 Cri. L.J.582

(*Circumstantial evidence-contd.*)

(xiii) Medical evidence did not support the case ot the prosecution that death was caused by poison still their Lordship have held that the circumstances were sufficient to hold the appellant guilty.

Anant Caintaman Lagu Vs. The State of Bombay
A.I.R. 1965 S C. 500 : 1960 Cri. L.J. 582

(xiv) The following circumstances do not lead to reasonable conclusion that the murder of the deceased was committed by the appellants.

1. On April 5, 1961, Kamla and Madhu Sudhan were in the house of Ramanuj Das. Kamla was the wife and Madhu Gudhan was the son of Raghav.
2. Kamla and Madhusudhan were last seen alive on April 5, 1961, in the evening.
3. On April 5, 1961, Raghav Prapanna was also in the house of Ramanuj Das.
4. On April, 5, 1961, at about 5 or 6 P. M. three gun shots were fired on the roof of Ramanuj Dass.
5. On April, 5 1961, of about 9 or 10 p m. Raghav Prapanna Mohan and Udham Singh left village Hamirpur Roora on the jeep of Raghav.
6. On April, 5, 1961 at about 11 p.m. Raghav Prapanna purchased petrol from Bidhuna Petrol Pump.
7. On April 6, 1961 at about 8-30 a m. Raghav Prapanna crossed Rawatpur barrier in Kanpur.
8 On April 6, 1961 Raghav Prapanna got a post card sent by his sister that Kamla had reached Lucknow safely.
9. On April, 7. 1961, blood-stained earth was recovered from the house of Ramanj Das from 11 different places.
10. On April, 14. 1961 blood stained earth was recovered from the house of Ramanuj Dass from 7 different places.
11. All the accused absconded after the alleged murder.
12 Blood-stained shirt and pyjama belonging to Raghav Prapanna were recovered from the possession of Snowhite Dyers and Cleaner, Lucknow.
13 The police could not trace out the jeep of Raghav Prapanna in spite of best effeorts.

Raghav Prapanna Vs. The State of Uttar Pradesh.
A.I R. 1963 S.C. 74 : 1963 (1) Cri- L J. 70

(xv) The fact that the accused appellant were in the house and could have possibily known of the removal of the dead bodies, if that was a fact, would not by itself establish that they assisted in the removal of the bodies. No offence u/s 201 I.P.C. is established.

Raghv Prapanna Vs. The State of Uttar Pradesh
A.I.R. 1963 S.C. 74 : 1963 (1) Cri. L.J. 70

(Circumstantial-evidence-contd)

(16 Circumstantial evidence can be the basis of an accused person's conviction if it is of such a character that it is wholly inconsistent with the innocence of the accused and is consistent with the guilt of the accused. (Tax case Chain Found Complete)

I. M. G Agarwal Vs State of Maharashtra
A.I R. 1963 S. C. 200 -1963 (1) *Cri L.J. 235*

(17) The chain of circumstancial evidence must be complete. That the statements made by the accused about recoveries relating to axe and dhoti were excluded from evidence. By excluding these recoveries the chain of circumstantial evidence becomes incomlete in this case and Prosecution has left missing links of the chain. So the conviction was set aside

Prabhoo Vs. State of Uttar Pradesh.
A.I R. 1963 S.C. 1113, 1963 (2) *Cri L.J. 182*

(18) The following circumstances were considered sufficient for maintaining the conviction :—

I. That the deceased was last seen in the company of the accused.
II. Making contradictory statements as to where the deceased was.
III That the recovery of the dead body was made at the instance of the accused.

Note :—The death sentence was maintained.

Rajinder Kumar & another Vs. The State of Punjab,
A.I.R. 1966 S.C. 1322 : 1966 Cri L.J. 960

(19) Firstly, the appellant was seen entering the house of Atar Singh at about 8 or 8-30 a m. on November 20, 1957, the morning on which the murder was committed , (2) when he entered the house he was wearing the shirt, Exp. 2, but when he came out, he had a vest on and no shirt, (3) the shirt, Exp. 2, stained with human blood was found near the dead body of Sarjiti ; (4) when the appellant entred the house of Atar Singh, he had carried some thing under his arm wrapped in a piece of cloth but when he came out he had nothing in his hand or under his arm and later on a blood-stained chopper belonging to the appellant was found near the dead body, and (5) both the shirt and chopper were stained with human blood

The circumstances were found to be sufficient to prove the guilt of the accused as they are consistent with the hypothesis of the guilt the of appellant and the chain of the circumstrnces is so complete as it does not leave any reasonable doubt for a conclusion consistant with the innocence of the appellant

The hypothesis that a stranger or a thief other than the appellant had committed the murder is completely inconsistent with the finding of the b'ood-stained shirt and chopper belonging to the appellant near the dead body.

Charan Singh Vs. The State of Utter Pradesh.
A.I.R. 1967 S. C. 520, 1967 Cri. L. J. 525

Citizenship.

S was born in India and was educated in India uptil the year 1951. S went to Pakistan and then came twice to India on the Pakistan Passport.

Order of deporation was passed after considering the representation of S that S had acquired the citizenship of Pakistan—Order challenged.

Held :—Appellant did not at any stage raise any plea that he had not voluntarily acquired the passport on the basis of which he came to India and it was also not urged that he had not voluntarily gone to Pakistan. He also did not explain his long stay of four years. So it is not possible for the court to hold that the Government of India was called upon to make any detailed enquiry when the provisions of para 3 of Schedule III of the Citizenship Rules were clearly applicable because S, the appellant had obtained pass port in Pakistan representing himself to be a Pakistani citizen.

Held :-further the Government of India has not failed to hold any enquiry which under the law was required Appeal stands dismissed.

Syed Khawaja Mohinuddin ······Appellant
Versus
Government of India and others ······Respondent
A.I.R. 1967 S.C. 1143 (August), 1967 Cri L.J. 1074, 1967 S.C.D. 559

Civil Nature

Hire and purchase agreement is of civil nature and its contravention does not make the same an offence of Criminal breach of trust.

Mohammad Sulaiman Vs. Md. Ayali.
A.I.R. 1965 S.C. 1319, 1965 Cri.L J. 421

Civil Proceedings

The expression 'Civil Proceedings' in Section 141 is not necessarily confined to an original proceedings like a suit or an application for appointment of a guardian etc., it applies also to a proceeding, which is not an original proceeding. So Section 141 and 24 (1) (b) of the Code of Civil Procedure are applicable to a proceeding arising out of a reference u/s 146 (1) Cr P C.

Ram Chander Vs. State of U P
A I R. 1966 S.C. 1888 :

Classification

Two Types of commitment proceedings provided in Section 207 and 207 A

Cr. P.C. do not contravene the provisions of the constitution The classification is reasonable

Macherla Hanumantha Rao Vs The State of Andhra Pradesh
A.I R. 1957 : S.C. 927.

Co-Accused

(i) Under section 30 of the Evidence Act confession of a co-accused can be taken into consideration but it is not in itself a substantive evidence There should be some other evidence to prove the guilt of the accused

Note :—In 1957 S C, 381 even by excluding the confession sentence was up held.

Ram Chandar Vs The state of Uttar Pradesh
A I R. 1957 S.C 381 :1957 Cri. L J. 559.

(ii) It is true that S 137 and S 138 of the Evidence Act do not in words speak of a further round of cross-examination there is neither in these sections nor anywhere else in the Evidence Act anything to bar the accused from exercising his right of cross examination afresh if and when the prosecution witness makes further statement of facts prejudicial to him So the co-accused can ask the witness what he had stated in reply to questions put to him in cross-examination by the other co-accused.

C.T. Muniappan Vs. The State of Madras.
A.I R. 1961 S.C. 175 : 1961 (1) Cri. L J. 315.

Cognizance

(1) Before it can be said that any Magistrate has taken congizance of any offence u/s 190 (1) (a), Cr. P C he must not only have applied his mind to the contents of the petition but he must have done so for the purpose of proceeding, in a particular way as indicated in the subsequent provisions of this Chap., proceeding u/s. 202 and thereafter sending it for inquiry and report u/s. 202 When the Magistrate applies his mind not for the purpose of proceeding under the subsequent sections of this Chap but for taking action of some other kind e.g ordering investigation ..u/s. 156 (3), or issuing a search warrant for the purpose of the investigation he cannot be said to have taken cognizance of the offence.

Magistrate has jurisdiction to issue warrants before taking cognizance having regard to the wording of S 3 of the Prevention Corruption Act the assumption that the Magistrate can issue a warrant only after taking cognizance u/s. 190 Cr. P.C. is unsound.

R.R chari Vs. State of Uttar Pradesh.
A.I.R. 1951 S. C. 207 : 52 Cri. L J. 775

(2) The initiation of the proceedings against a person commences on the cogni-

zance of the offence by the Magistrate under one of the three contigencies mentioned in the section.

1. in respect of non-cognizable offences on the complaint of an aggrieved person.

2. on the police report in the case of a cognizable offence when the police have completed their investigation and comes to the magistrate for the issue of a process.

3. when the magistrate himself takes notice of an offence and issue the process

R.R. Chari Vs. The State of Uttar Pradesh
A. I R. 1951 S. C. 207 1961 Cri L.J. 775

(3) Magistrate is not bound to take cognizance when a complaint is filed and the word 'MAY' does not connote 'must' He may send the complaint u/s 156 (3) Cr. P C. to the police for investigation.

Gopal Dass Vs. State of Assam,
A.I R. 1961 S.C. 986.

(4) The Additional District Magistrate passed on the complaint to Mr. Thomas to deal with it Mr. Thomas seeing the case a cognizanable one sent the complaint to Police.
Held : Neither additional District Magistrate nor Mr. Thomas magistrate took cognizance as when a magistrate applies his mind not for the purpose of proceedings under the various sections of Chapter XVI but for taking action of some other kind e.g. ordering investigation u/s 156 (3) or of issuing search warrant for the purpose of investigation, he cannot be said to have taken cognizance of any offence.

Gopal Dass Vs. State af Assam
A I.R 1961 S.C. 986

(5) As soon as a special judge receives the orders of allotment of a case passed by the State Government he becomes vested with jurisdiction to try the case and when it receives the record from the Government, he can apply his mind and issue notice to the accused and thus start the trial of the proceedings assigned to it by the State Government.

Ajit Kumar Vs. The State of West Bengal
A.I R. 1963 S. C. 765 : 1963 (1) Cri. L J. 797

(6) The Cognizance means to become aware of facts and to take notice judicially

Ajit Kumar Vs. The State af West Bengal
A,I.R. 1963 S-C. 76 5: 1963 (1) Cri. L.J. 797

(7) When on a complaint the magistrate applies his mind for proceedings under the various provisions of Chapter XVI of the Code of Criminal Procedure, he must be held to have taken cognizance of the offence mentioned in the complaint. When, however, he applies his mind not for such purpose but for purposes of ordering investigtaion u/s 156 (3) or issues a search warrant for

to say that the act was done by the accused officer under the colour of his office.

Note.—Head constable received bribe for weakening the prosecution case. Prosecution launched after 6 months. Held that it does not attract the provisions of Bombay Police Act u/s 162 (1). Alleged bribe was not an act under the colur of his duty So Prosecution can be, under these circumstacas launched. after six months.

State of Maharashtra Vs Narhar Rao
A.I.R. 1966 S.C. 1783 (Page 1785), 1966 Cri. L J. 1495

Column No. 2.

Note : See Cognizance at S. No. 13.

Raghbubans Dubey.......Appellant
Versus
State of Bihar
A.I.R. 1967. S.C. 1167. (August Part), 1967 Cri. L.J. 1081

Co-operative Society.

The appellant preferred an appeal to the Joint Registrar of Co-operative Societies against the order of the Assistant Registrar who was made respondent No. 2 in the appeal. One of the grounds of appeal ran as follows;-

"For that the order of respondent No. 2 is mala fide inasmuch as after receiving the order of transfer he singled out this case out of so many for disposal before making over charge and used double standard in judging the charges against the defendants Nos. 1 and 2

Held·—

There can be no doubt that the words used in this case in the grounds of appeal clearly amounted to contempt of Court provided the Assistant Registrar was a Court and the Contempt of Courts Act was applicable to the facts of the case.

Held :—

That the Assistant Registrar was functioning as a Court in deciding the dispute between the bank and the appellant. It must be borne in mind that all the Registrars of all co-operative Societies in the different states are not "Courts" for the purpose of contempt of courts Act, 1952. This decision is expressly limited to the Registrar and the Assistant Registrar like the Bihar and Orissa Co-operative Societies Act.

Thakur Jugal Kishore Sinha.. Appellant
Vs.
The Sitamarhi Central Co-operative Bank
A.I.R. 1967 Supreme Court 1494 (Oct. Part), 1967 Cri L.J. 1380

Co-owner

According to the presecution the appellants are partners. Though it is true that the partnership deed has not been placed before court there is other material which would justify the conclusion that they are partners. The fact that the sale deed stands in rhe names of both these persons shows prima facie that both of them have interest in the mill Then there is a statment of Ramaswami to the effect that they were partners. Then there is the evidence to the effect that both of them were taking part in running the mill. So all the Co-owners being consumers of elecricity are liable under S. 44 (c) and R. 138 of the Electricity Act (1910)

Ram Chandra Prasad Vs State of Bihar
A.I R. 1967 S C. 349, 1967 Cri. L J· 409

Commencement

The complaint for the infringment or invasion of the trade marke be filled within one year of such discovery-otherwise the complaint can not be entertained

Dau Dayal Vs the The State of Uttar Pradesh
A.I R. 1959 S C 433: 1958 Cri. I.J. 524

Commission.

Witness in a criminal case should not be examined on commission except in extreme cases of delay, expense or inconvenience Usually the issuing of commission be restricted to formal witnesses or such witnesses who could not be produced without an amount of delay or inconvenience Magistrate should assign the reasan for same.

Held : Magistrate acted improperly in having the essent al witness examined on commissian. So accused could not have hair trial.

Dharman and Pant Vs. State of Uttar Pradesh
A I.R. 1957 S C. 594 : 1957 Cri L J. 894

Note : Case was remanded for retrial

Commission of an offence

The use of the Phrase "Every person" in S 2 as contrasted with the use of the phrase "any person" in section 3 as well as S 4 (2) of the Cr. P. Code is indicative of the idea that to the extent that the guilt for an offence committed within India can be attributed to person, every such person without exception is liable for punishment under the Code.

Note : Appellant was Pakistani national at the time of the commission of offence at Bombay, he was held guilty not withs tandiug his not being corporeally present in India at that time.

Mubark Ali Ahmed Vs. the State of Bombay
A.I.R. 1957 S.C. 857 : 1957 Cri L:J. 1346

Commitment.

(i) The Legislature has provided for a clear classification between the two kinds of proceedings at the commitment stage i.e. u/s 207 and U/s 207 A of the

Code These provisions do not violate Art 14 of the Constitution.

Macherla Kamumantha Rao Vs. the State of Andhra Pradesh.
A.I.R. 1957 S.C. 927

(ii) When the magistrate decided the case to be committed, he ought to inform the accused and see that the provisions of Chapter XVIII of the Code are complied with upto the stage at which he decided to commit the case. If he fails to do so, the accused can reasonably conclude that a trial is being held. The accused is being deprived of the right to produce defence evidence, if any under S. 208. The fact that in the complaint u/s. 467 Penal Code which is exclusively triable by a court of Session, is mentioned, is of no consequence when the summons issued to the accused were only for a trial u/s 406 of the Penal Code. The denial of opportunity for producing defence u/s 208 Cri. P. C. is sufficient to cause Prejudice to the accused. So the commitment order be quashed.

Chhadmirlal Vs. the State of Uttar Pradesh
A.I R. 1960 S.C. 41 : 1960 Cri.L.J 145

(iii) Magistrate can make up his mind definitely on the basis of document referred to in S. 173 of the Criminal Procedure Code without aid of any oral evidence and in that event he would he within his rights to discharge or commit the accused.

Note : See also AIR 1964 S.C. 949

Shri Ram Vs. The State of Maharashtra
A.I.R 1961 S. C. 674 : 1961 (1) Cri L.J. 760

(iv) U/s 215 of Code of Criminal Procedure the orders of commitment once made becomes final and can only be quashed by High Court on point of law

Mohinder Singh Vs. The State of Pb.
A.I R. 1965 S.C. 79.

The Magistrate is entitled to rely upon the version in the examination-in chief of some of the witnesses and the other document and to reach his concusion that there is a Prima face case.

Mohinder Singh Vs. The State of Pb.
A.I.R. 1965 S.C. 79

Commital Order

Where two offenders are charged u/s 302 and 307 of Penal Code, the offence being of the same kind, one joint trial of those offences is justified u/s 234 Cr. P.C.

Banwari Lal Vs. The State of Uttar Pradesh
A.I R. 1962 S.C. 1198 : 1962 (2) Cri. L.J. 278

(ii) The commital order does not bind the Session Judge to try the persons committed by the particular committal order.

A Session Judge cannot try at one trial persons committed under different

committal orders with respect to distinct offences whose joint trial is not warranted by the provisions of Sections 234 to 237 of the Criminal P.C. but he is competent to try at one trial persons who can be tried at one trial under the provision of sections even if there had been separate committal orders.

Banwari Lal Vs The State af Uttar Pradesh.
A I.R. 1962 S.C. 1198 : 1962 (2) Cri. L J. 278

Committal Proceedings

(i) The committal proceedings are a stage of the judicial proceedings before the Session Judge. Even when Session Judge is unable to say which of the two (first made before committing magistrate and the later before Session judge) contradictory statement is false or even where he is of opinion that the statement before the Committing Magistrate is false it is for him and him alone to act u/s 479A. of Criminal Procedure Code.

Shabu Hussain Bholu Vs State of Maharashtra.
A.I R. 1963 S.C. 816 : 1963 (1) Cri. L J. 803

(ii) Magistrate should insist upon the examination of the principal witnesses to the actual commission of offence in the commitment proceedings where the inquiry is for serious offences like murder. A magistrate failing to examine witnesses to the actual commission of the offence because they are not produced, without considering whether it is necessary in the interest of justice to examine such witness, fails in the discharge of his duties.

Kirpal Singh Vs The State of Uttar Pradesh
A.I.R. 1965 S.C. 712 : 1965 (1' Cri. L J. 636 (May Part)

Committed

An act can be said to be committed in oder to the committing of an offence even though the offence may not be completed. Thus if a peason commits a house trespass with the purpose of committing of theft but has faild to accomplish the purpose it will be proper to say that he has committed the house trespass in order to the committing of theft.

Matiullah Sheiksh Vs the State of west Bengal
A.I.R. 1965 S.C. 132 : 1965 (1) Cri. L.J. 126

Commitment :

(i) The provisions of Section 437, (Code of Criminal Procedure) do not make it obligatory upon a Sessions Judge or a District Magistrate to order commitment in every case where an offence is exclusively triable by a Court of Session. The law gives a Discretion to the revising authority and that discretion has to be exercised judicially.

Thakur Ram Vs The State of Bihar
A.I.R. 1966 S.C. 911 (Page 917), 1966 Cri. L.J. 700

(ii) The appellant and others were tried for an offence u/s 307/148/149 I.P.C. but the enquiry Magistrate after examining II Prosecution witnesses decided to

try the petitioner u/s 251-A of the Criminal Procedure Code. for offences u/s 326 and 338 IPC only

It is manifest that the order of the Magistrate is tantamount to an implied order of discharge and the Additional Sessions Judge had, therefore, jurisdiction, under S. 437, Criminal Procedure Code, to set aside the order of the Magistrate and to order that the accused should be committed to trial in the Court of Sessions on the major charge under Section 307, Indian Penal Code. There is nothing in the language of S. 437, Criminal Procedure Code from which it could be said that the power of the Sessions Court under that section can be exercised only when the Magistrate has made an express order of discharge. The Section 209 (1) Criminal Procedure Code does not contemplate that an express order of discharge should be made in a case where upon the same facts it is possible to say that though no offence exclusively triable by a Court of Session is made out, an offence triable by a Magistrate is nevertheless made out and the Magistrate thereafter proceeds with the trial of that offence

The language used in S. 437, Criminal Procedure Code is wide and there is nothing in that section from which it could be gathered that the power can be exercised only when the Magistrate has made an express order of discharge.

Held :—The Additional Sessions Judge had jurisdiction to set aside the order of the Magistrate and direct the commitment of the appellant to Session Court on charge u/s 307 of the Indian Penal Code.

Ramekbal Liwary Vs. Madan Mohan
A I R. 1967 S.C. 1156, 1967 Cri. L.J. 1076

Note In this case appellant was firstly charged u/s 326 and 338 IPC instead of 307 IPC and were acquistted on these charges also

II Note. The order of commitment u/s 307 IPC inspite of acquittal u/s 326 and 338 can be made by the Session Judge.

III Note. In this case it was not found expedient to try the appellant after a lapse of time.

Committing Magistrate

In a complaint, Magistrate after recording all the evidence of the complainant and the accused, discharged the appellant (accused) on the three following grounds.

(i) that the appellant accused had given very good evidence in defence before the Enquiring Magistrate to prove alibi.

(ii) that the medical evidence did not fully bear out the complainant's version.

(iii) that the Prosecution witnesses were interested persons.

Held :—that these were the points on which the different courts can take the different views and further.

A Magistrate enquiring into a case under S. 209 Cr. P. C. is not to act as a mere Post Office, and has to come to a conclusion whether the case before him is fit for commitment of the accused to the Court of Sessions ; but in arriving at that conclusion, it is not the function of an enquiring Magistrate to weigh the pros and cons of the prosecution and defence evidence and to

discharge the accused merely because in his view the defence evidence was better than the prosecution evidence.

Note : -Session judge order directing committing the accused to the court of Session was up held.

K.P Raghvan and other Vs M.H. Abhas and another.
A I.R. 1967 S.C 740 1967 Cri. L J. 653, (1967) 1 S C. WR 320.

Common Intention.

(i) Common intention required by S 34 and common object required by S. 149 of I.P.C. are for from being the same thing It is not possible to have recourse to S. 34 when appellants have not been charged with that even in the alternative So the application cannot be availed But where the facts proved and evidence adduced with refrence to the charge u/s 149 would be the same if the charge were u/s 34, then the failure to charge the accused u/s 34 would not Prejuctice the accused. So S. 34 IPC can be substituted for S-149 IPC.

Note : -See also 1954 S C. 204, 1954 CriLJ 580.

Dalip Singh Vs. The State of Pb.
A I. R. 1953 · S.C. 364 : 1963 Cri. L.J. 1465.

(ii) Even if it is held proved that all the appellants were seen at the spot at the time of firing this fact by itself cannot be held enough to prove a common intention of the appellants to murder. It can well be that these four persons were standing together and one of them suddenly seeing Sunder fired at him. This possibility has not been eliminated by any evidence on the record. In such a situation when it would not be known who fired the fatal shot none of such persons could be convicted of murder under section 302 I.P.C.

Ram Nàth Vs. State of Madhya Pradesh
A.I.R. 1953 S.C. 420 : 1953 Cri. L J. 1772

(iii) It is essential for the application of S. 34 IPC that the accused join in the actual doing of the act and not merely in planning its preperation. If the accused was not present at the actual commission of offence he cannot be convicted with the aid of section 34.

A.I.R. 1955 S.C. 287 : 1955 Cri. L.J. 857.

(iv) It is not necessary to adduce direct evidence of the common intention. The common intention may be inferred from the surrounding circumstances and the conduct of the parties.

Rishide Pande Vs. The State of Uttar Pradesh
A.I.R 1955 S.C. 331 : 1955 Cri L J. 873

(v) For the application of Section 34 if it is found that he shared the common intention to kill and actually participated by being present at the spot with lathi, then he is as much guilty of the whole act as is his co-accused who gave the fatal blow.

Note : - Death Sentence of both accused was upheld.

Rishideo Pende Vs. The State of Uttar Pradesh
A.I.R. 1955 S.C. 331 · 1955 Cri. L J. 873

(Common-intention-contd)

(vi) The appellant was not charged for having committed the murder himself, nor does the evidence indicate that he was charged for having shared the common intention of four named persons and for having participated in the crime If these four sersons are acquitted, the element of sharing a common intention with them disappears; and unless it can be proved that he shared a common intention with the actual murderer or murderers, he cannot be convicted with the aid of S. 34.

Note : Conviction was set aside.

Prabhu Babaji Navel Vs. The State of Bombay
A.I R. 1956 S.C 51 : 1956 Cri. L.J. 147

(vii) Complainant and his party was attacked by the 3 appellant, in the first incident They pursued the complainant and persisted in assaulting him and those who had come to his help The clear implication of this was that the assult in the second incident was the result of previous concert. The common intention of every one is proved.

Note.—Conviction u/s 326/34 was upheld.

Khacheru Singh Vs. The State of Uttar Pradesh
A I.R. 1956 S C 546 1956 Cri L.J. 950

(viii) When two persons shot at P but by mistake they caused the death of another person. Both are equally guilty u/s 302 of IPC as both shared common intention of murdering P.

A.I R. 1956 S. C. 754

(ix) The principle which the section embodies is participation in some action with the common intention of committing a crime, once such participation is established, section 34 is at once attracted.

Bharwad Mepa Dana Vs The State of Bombay
A.I.R. 1960 S.C. 289 1960 Cri. L.J. 424

(x) For the purpose of common intention the participation in the commission of the offence need not in all the cases be by physical presence.

Note —Misappropriation was committed by removing goods from a Govt. department and on the occasion of the removal of the goods, the first accused was not present Actual participation is not necessary in such offences which consist of diverseacts which may be done at different times and p laces.

Jaikrishnadas Monoharidas Desa Vs. The State of Bombay
A.I.R. 1960 S.C. 889 . 1960 Cri. L.J. 1250.

(xi) When several persons are armed with lathis and one of them is armed with hatchet and all agreed to use those weapons in case they are thwarted. So they are guilty as they have used voilence in prosecution of their common object.

Hukam Singh Vs. State of Uttar Pradesh
A.I.R. 1961 S.C. 1541 . 1961 (2) Cri. L.J. 711

(*Common-intention-contd*)

(xii) The mere fact that "K" was not connected with the dispute about the plot of the land is not sufficient to hold that he could not have formed a common intention with the others when he went with them armed.

Kartar Singh Vs. The State of Pb.
A.I R. 1961 S C. 1787 · 1961 (2) Cri. L J. 853

(xiii) Conviction under section 302, 307 and 149 can be converted into one under sections 302-307 and 34 I. P.C.

Kartar Singh Vs. The State of Pb.
A.I R. 1961 S.C 1787 . 1961 (2) Cri L J 853

(xiv) Common intention may also develope on the spot during the course of the commission of the offence.

Krishna Govind Vs State of Maharashtra
A.IR. 1963 S.C. 1413 : 1963 (2) Cri L J. 351

(xv) Where the High Court acquitted accused 1,3 and 4 under section 302. read with Section 34 of the Indian Penal Code, and convicted accused 2 under Section 302, read with Section 34, of the said Code. for having committed the offence jointly with the acquitted persons. That is a legally impossible position. When accused were acquitted either on the ground that the evidence was not acceptable or by giving benefit of doubt to them the result in law would be the same; it would mean, that they did not take part in the offence. The effect of the acquittal of accused 1,3 and 4 is that they did not conjointly act with accused 2 in committing the murder. If they did not act conjointly with, accused 2 could not have acted conjointly with them So accused 2 can't be convicted with the aid of S 34 I P. C

A.I.R. 1963 C.C. 1413 : 1963 (2) Cri. L. J. 351

(xvi) A went out for a peaceful purpose in the company of his young son and immediately after his arrival, A was chased by two of the appellants and caught and felled to the ground. After this the remaining four appellants appeared and beat A with diverse weapon while those who were not armed, held him pinned to the ground.

Held :—On these facts, the act took place infurtherance of a Common intention because the six accused could not but by a prior concert have appeared simultaneously at the scene and chased and over thrown the victim.

Abrahim Sheikh Vs. State of West Bengal
A. I. R. 1964 S.C. 1263 : 1964 (2)Cri L J 350

(xvii) Notwithstanding the section 304 Part 11 of IPC speaks only of knowledge, while S. 34 deals with common intention Knowledge of death being likely consequence of criminal act of beating, attributable to each offender, attracts

(*Common intention-contd*)

S. 34 S 304 Part 11 cannot be devoiced from common intention.

Afıahim Sheıkh Vs. State of West Bengal
A.I.R. 1964 S.C. 1263 · 1964 (2) Crı L.J. 350

(xvııı) S. 34 of I P. C. does not create a distinct offence it only lays down the principle of joint criminal liability.

Gurdatta Mal Vs State of Uttar Pradesh
A I R 1965 S C 257 19665 (I(Cri. L.J. 242

(xıx) Once ıt is established that the Common ıntention was to commit murder, the question of separate ındividual lıabılıty in the context of private defence, would be out of place.

Gurdatta Mal Vs State of Uttar Pradesh
A I.R 1965 S.C 257 · 1965 (1) Cri. L.J. 242

(xx) It ıs tıue that in ascertaining whether a group of persons had common intention to murder, the evidence adduced by the defence that they had common ıntention only to cause of hurt ıs relevant.

Gurtdatta Mal Vs State of Uttar Pradesh
A.I R. 1965 S.C 257 : 1965 1) Cıi. L J 242

(xxi) Accused No. 2 and 3 not present when various offences were committed by accused No. 1 Accused Nos 2 and 3 held could not be convıcted by virtue of S 34.

Smt. Shahzad Kunwaı Vs Raja Ram
A.I.R. 1965 S.C. 264 : 1965 (1) Cri. L.J. 242

Common Object

(ı) Where it is possible to conclude that though five persons were unquestionable at the place of offence but the ıdentiy of one or more is ın doubt, the convictıon of the rest with the aıd of section 149 I. P. C. would be good.

Dalip Singh Vs. The State of Pb.
A.I.R. 1953 S.C. 364 : 1953 Cri. L.J. 1465.

(iı) An assembly which was lawful when it assembled can become unlawful subsequently. Previous concert is not necessary. The Common object required by section 149 IPC. differs from the common intention requıred by Section 34 IPC in this respect.

Moti Dass Vs. The State of Bihar
A.I R. 1954 S.C. 657 :1954 Cri L.J. 1708

(ııı) The absence of the name of the accused in the F I.R. and the absence of the marks of ınjury on his (accused) person are only material and relevant for

Common-object-contd)

the purpose of appreciation of evidence where court below have come to definite finding on the evidence before them that the accused was a member of unlawful assembly and took some part in inflicting the injuries on the deceased in prosecution of their common object, Supreme Court cannot go behind the concurrent finding.

Thakur Prasad Vs The State of Madhya Pradesh
A.I R 1954 S.C 30 1954 Cri. L. J. 261

(iv) Under section 149 the liability of the other members for the offence committed during the continuance of the occurance rests upon the fact whether the other party members knew before hand that the offence actually committed was likely to be committed in prosecution of the common object

Note :—Such knowledge was not attributed to the a appellants who ware not armed with sharp edged weapons. The appellant was having lathis S 114 IPCwas not applied, appeal was accepted.)

Gajanand Vs State of Uttar Pradesh
A I R. S.C. 695 . 1954 Cri. L J. 1746

Common Object

(v) Common object does not require prior concert and a common meeting of minds before the attack, and an unlawful object can develope after the people get there. So the persons who had come there quite lawfully in the first instance, thinking there were thieves could well have developed an intention to beat up the thieves insted of helping to apprehend them or defend their properties and if five or more shared the object and joined in the beating, then each would be sharing common object

Sukha Vs State of Rajasthan
A.I.R. 1956 S.C 513 : 1956 Cri. L. J 923

(vi) When people go armed with lethal weapons to take possession of land which is in possession of others, they must have the knowledge that there would be opposition and the extent to which they were prepared to go to accomplish their common object would depend on their conduct as a whole

Mizaji Vs. State of U. P.
A.I R. 1959 S C. 572 . 1959 Cri L J. 777

(vii) A finding with certainty that the number of persons who constituted the unlawful assembly was more than five, though the identity of four only has been established ; and the killing was done in prosecution of the common object of the entire unlawful assembly. Coviction was held to be legal.

Bharwad Dana Vs The State of Bombay.
A.I.R 1960 S.C. 289 : 1960 Cri, L.J. 424.

(viii) Where the Principal offender was convicted u/s 302, the others can not be Convicted u/s 304 read with S. 149, I.P.C.

Shambhu Nath Singh Vs State of Bihar
A.I.R. 1960 S.C. 725 : 1960 Cri. L. J. 1144

(*Common object-contd*)

(ix) The common object of the assembly was to cause grievous hurt and death was caused by one of the members of the assembly,. For causing the death, others are not responsible, the conviction of the other members under section 326 read with 149 was therefore properly recorded as :

A conviction for an offence under Sec. 326 read with Sec. 149 of the Indian Penal Code may be recorded against the members off an unlawful assembly, even if it be established that an offence of murder was committed by a member of that assembly The offence under Sec. 326 of the Indian Penal Code is in its relation to the offence of murder a minor offence and the language used in Sec. 149 or the Inian Penal Code does not prevent the court from convicting for that minor offence merely because an aggravated offence is committed.

Shambhu Nath Singh Vs State of Bihar
A I.R. 1960 S.C. 725 : 1960 Cri. L.J 1144

(x) When several persons are armed with lathies and one of them is armed with hatchet and all agreed to use those weapons in case they are thwarted So they are guilty as they have used violence in prosecution of their common object

Hukam Singh Vs State of Uttar Pradesh
A I R 1961 S.C. 1541 : 1961 (2) Cri. L J. 711

(xi) When it was held that the assailant's party was prepared for a fight and had no right of private defence It must follow that its intention to fight and cause injuries to the other party amounted to their having a common object for committing offence.

Kartar Singh Vs State of Pb
A I R. 1961 S.C. 1787 : 1961 (2) Cri. L.J. 853

(vii) The common object of the unlawful assembly was to commit an assault because they were armed with divrse weapons and must have known that grievous hurt was likely to be caused" in prosecution of the common object.

Shambhu Nath Singh Vs State of Bihar
A.I.R. 1960 S.C 725Cri L.J. 1144

(xiii) Conviction under section 302-307 and 149 can been converted into one under section 302-307 read with see 34 IPC.

Kartar Singh Vs State of Pb
A.I.R. 1961 S.C. 1787 : 1961 (2) Cri. L.J 853

It is not obligatory to charge a person undersection 147 or148 Indian Penal code before Section 149 I.P.C. can be utilized. If a person is not charged under section 147 I.P.C., it does not mean that section 149 I. P. C. cannot be used. Sections 143, 146, 147 and 148 are implied when Section 149 I.P.C

is applied on the facts of the case.

Mahadev Sharma & other Vs. State
A.I.R. 1966 SC. 302 : 1966 Cri. L.J. 197

Communal Tension

The machinery of justice can not be geared to work in the midest of communal Tension. It is a good ground for transfer of a case.

G.X Francise Vs. Bank Bihari Singh
A.I.R 1958 S C. 309 : 1958 Cri L.J 569

Communication

(i) The statement of the accused to the wife that he would give her chail choori lachha kara and Zangir and that he had gone to the house at the decesaed in order to get them is inadmissible u/s 122 of Evidence Act.

RamBharosay Vs. State of Uttar Pradesh
A.I.R. 1954 S C. 704 :1954 Cri L.J. 1755

(ii) The decision of the Government to detain a particular person whose activities have been considered prejudicial to the maintainance of the public order i.e. an order u/s 14 of the Jammu and Kashmir Preventive detention act may-not be communicated to the detenu.

Mohammad Afzal Khan V s State of Jammu and Kashmir
A.I R. 1957 S.C. 173 1957 Cri. L.J. 320

(iii) The decision recorded by the authority under R-30A (8) is not, as a matter of law, required to be communicated to the detenue but it is desirable and would be fair that the decision should in every case be communicated to the detenue.

Biren Dutta Vs. Chief Commissioner of Tripura
A I.R 1965 S.C. 596 · 1965 (I) Cri. L.J. 501.

Competent Witness

An approver is a competent witness but the approver should be reliable witness and it must receive sufficient corroboration

Sarwan Singh Vs The State of Punjab
A.I.R. 1957 S.C. 637 · 1957 Cri L.J. 1014

Compensation.

The complainant u/s 198B is undoubtedly the Public Prosecutor but the complaint may, when the person defamed is a Ex-minister or a Public servant be regarded to be filed at the instance of such minister or public servant. The court can award compensation.

P.C Joshi Vs. The State of Uttar Pradesh
A.I.R. 1961 S.C. 387 : 1961 Cri. L J. 566

Complaint.

(i) There is no legal impediment to a returning officer in filing a complaint under Sections 181 and 182 I P.C. as provided in Section 195 (1) (a) and charging the accused there in with also an offence under section 193 I.P.C.

(Note —Returning Officer acts u/s 36 of Representation of People Act).

Virendar Kumar Vs. The State of Pb.
A.I.R. 1956 S.C. 153 : 1956 Cri. L.J. 326.

(ii) The Magistrate is not bound to accept the result of the inquiry or investigation or that he must accept any plea that is set up on behalf of the person complained against. The magistrate must apply his own judicial mind. Further it would be erroneous in law to hold that a plea based on an exception can never be accepted by a magistrate in arriving at his judgment. So the plea of self defence has been rightly considered by the magistrate in dealing with a complaint

Vadilal Vs. Datta Traya Dulaji Ghandigaonkar
A.I.R. 1960 S.C. 1113 : 1960 Cri. L J. 1499

(iii) An application by a patwari was given to the Tehsildar reporting that two persons have beat him. This application was sent to the police for action. The police required into the facts of the application and reported that the allegations in it were wrong. Police launched a prosecution against the appellant patwari. Held, the false report was made before the Tehsildar and he was only competent to file a complaint in writing to the court. As it has not been done the trial was without jurisdiction ab-initio.

As the charge sheet was put in by the station House officer so the trial u/s 182 I P.C. against the appellant was without jurisdiction ab-initio.

Dault Ram Vs. The State of Pb.
A.I.R. 1922 S. C. 1206 : 1964 (2) Cri L J. 286

(iv) There are two restrictions placed upon the power of the Public Prosecutor. to lodge a complaint with respect to defamation of a high dignitary such as the Governor. The first is that he must have been given a sanction to lodge such complaint and the other is that the sanction should be accorded by a Secretary to the Government authorised by the Governor in this behalf. When Governor who has been defamed says that he leaves it to the Government to take such action as it think fit, the inference must be that he is personally indifferent whether a complaint is lodged or not. So the Complaint by the Public Prosecuter or by the Government cannot be lodged.

Gour Chandra Rout Vs. The Public Prosecutor Cuttack.
A.I.R. 1963 S.C. 1198 : 1963 (2) Cri. L.J. 194.

(v) The magistrate acting under section 203 Cr. P. C. has to satisfy himself on the statements before him and not besides that, where the magistrate has con-

(*Complaint-contd*)

sidered the investigation of police and the evidence before him in another complaint the proceeding should be vitiated.

Chandra Deo Singh Vs. Prakesh Chandra Bose
A.I.R. 1963 S.C. 1430 : 1963 (2) Cri L J 397

(vi) The object of enquiry u/s 202 (1) Cr. P. C. is to ascertain the truth of falsehood of the complaint, the magistrate is to ascertain the same only with reference to the entiinsic quality of the statements before him and not besides this.

Chandra Deo Singh Vs. Parkash Chandra Bose
A.I.R. 1963 S,C 1430 : 1963 (2) Cri L. J. 397

(vii) An offence punishable under section 471 of Penal Code being one of fraudulently or dishonestly using as genuine any document, which the accused knows or has reason to believe to be a forged document, does not fall within the ambit of section 479A (1) of Cr. P. C and therefore the authority of the court to act under S 476 of the Code is not impaired by sub-section 6 of Section 479 A

Babulal Vs. The State of Uttar Pradesh
A.I.R. 1964 S.C. 725 : 1964 (1) Cri L.J

(viii) Complaint by a private party for an offence u/s 195 I.P.C. committed in the proceedings before the Income Tax Officer, is not competent as the Income Tax Officer only can move complaint u/s 195 (1) (b) Cr. P. C.

Note. Section 37 (4) of Income Tax makes the proceedings before the Income Tax Officer judicial for 195 (I) (b) Cr P. C

Lalji Haridas Vs. The State of Maharashtra
A.I.R. 1964 S C. 1154 : 1965 (2) Cri. L J 249

(ix) The High Court ordered the Registrar of that Court to make a complaint in writing against the appellants for their Prosecution under SS 193 199 and 211 of the Indian Penal Code The High Court. however certified the case fit for appeal under Art. 134 (1) (c) of the Constitution. The Supreme Court will not ordinarily do more than to examine in such case whether the High Court has fully considered the case to reach the conclusion that prima facie there is good reason to launch the prosecution, and there is reasonable prospect of conviction and that it is expedient in the interest of justice to order a prosecution.

Hari Dass Vs. The State of West Bengal
A.I R 1964 S.C. 1773 : 1964 (2) Cri L.J. 737

(x) Magistrate ordering police to institute case and report after examining the complaint u/s 200 of the Code. The Magistrate had taken cognizance on complaint. There was no scope of cognizance being taken afreash of the same

(Complaint-contd)

offence after the police officer's report was received. So the case wase instituted on private person's complaint.

Jamuna Singh Vs. Bhadai Shah
A.I R 1964 S.C. 1541 : 1964 (2) Cri. L.J. 468

(xi) Offences of forgery of a document as described in Section 463 I P.C. and of using such forged documents. if produced or given in evidence by a person other than a party to a proceeding in a Court do not require a complaint in writing of the Court concerned, but prosecution in respect of offences under Sections 193 to 196, 199 and 200 (among others) committed in a judicial proceeding by a person (whether a party or not) requires a complaint in writing of the Court before which the offence is committed or of some other Court to which such Court is subordinate. It is this difference which has apparently induced the selection of Sections 463/471 rather than Section 193/196 of the Indian Penal Code The former do not require a complaint by the Court but the latter do.

Dr. S. Dutt Vs The State of U.P.
A.I R. 1966 S C 523 (Page 525) 1966 Cri. L J. 459

(xii) Central Excise Officer can file complaint under the Central Excise and Salt Act.

Badaku Joti Svant Vs. State of Mysore
A.I R 1966 S.C. 1746 : 1966 Cri. L.J. 1353

(xiii) Section 195 Cr. P.C. does not bar the trial of the appellant for the distinct offence u/s 353 of the I P.C. though it is practically based on the same facts

Note :—In this case no complaint was made but F.I.R. was lodged u/s 353 I P.C. Trial for want of compliance of the provisions contained in Section 195 Cr. P.C was not vitiated.

Durgacharan Naik Vs State of Orissa
A.I R. 1966 S.C. 1775 : 1966 Cri. L J. 1491

Complaint

(xiv) The term "complaint" has been defined by the Code of Criminal Procedure and it "means the allegation made orally or in writing to a Magistrate, with a view to his taking action under the Code, that some persons, whether known, or unknown has committed an offence, but it does not include the report of a police officer. Further The term "complaint" would include allegations made against unknown persons.

Raghubans Dubey Vs State of Bihar
A.I.R. 1967 S.C. 1167 (Aug part) 1967 Cri. L.J. 1081

(xv) The general power of attorney launched the First Information Report. The informant was held to be by the person aggrieved and so the law was rightly set in motion.

Ram Chandera Prasad Vs State of Bihar
A.I.R. 1967. S.C. 349 1967 Cri. L.J. 409

Compliance

(1) When the previous statement is a long one and only one or two small passages in it are used for contradiction, that may, in a given case, confuse a witness and not be a fair method of offording him an cpportunity to explain but where the previous statement is a short one and the witness was questioned about every material passage point by point. The procedure adopted was in substantial compliance with what section 145 of the evidence Act requires.

Bhawan Singh Vs State of Punjab
A.I.R. 1952 S.C. 214 . 1952 Cri. L.J. 1131

2. The defect of non-compliance in the investigation with S. 5 (4) of the prevention of Corruption Act will not take away the jurisdiction of the special Magistrate.

State of Madhya Pradesh Vs Veereswar Rao
A.I.R. 1957 S.C. 592 : 1957 Cri. L J. 892

3. The District Magistrate not complying with the provisions of S. 503 Cr.P.C., the defect is fatal and trial is vitiated. Evidence on commission has to be **eschewed** from recored.

Dharmanand Pant.
A.I R. 1957 S C. 594 : 1957 Cri. L.J. 894.

4. Sub Inspector of police placed an application before the magistrate seeking the permission for launching prosecution. On the application the Magistrate Passed the order "Permission given" Neither the application nor the order made there on discloses that any material was placed before the magistrate.
Held .
Magistrate only mechanically issued the order on the basis of the application which did not disclose any reason, presuamably he thought that only a formal compliance with the provisions is required. So the previsions of S. 5. A of the Prevention of corruption Act have not been strictly complied So the trial is vitiated.

The State of Madhya Pradesh Vs. Mubark Ali
A.I.R. 1959 S.C. 707 · 1959 Cri L J. 920

5. It is the usual practice of the Supreme Court to accept the concurrent finding of fact arrived at by the courts below unless there are no exceptional circumstances in the case to depart from the usual practice.

Deep Chand Vs. State of Rajasthan
A.I.R. 1961 S.C. 1527 : 1961 (2) Cri. L.J. 705

(Compliance-contd)

6. The Magistrate, on a consideration of the entire evidence, having regard to the salary of the respondent and the value of the property he purchased, awarded maintenance to the wife at the rate of Rs. 100/- per month for herself and at the rate of Rs. 50/-per month for the maintenance of her minor child. The Additional Session Judge, on a reconsideration of the evidence, accepted the finding of the learned Magistrate and confirmed the quantum of maintenance. The finding is a concurrent finding of facts the correctness where of cannot ordinarily be questioned in a revision petition in the High Court,

Mst. Jagir Kaur Vs. Jaswant Singh
A.I.R. 1963 S.C. 1521 : 1963 (2) Cri. L.J. 413

Composition —Assam Forest regulation act

To have the effect of an acquittal the offence compounded must be one specified either under sub-s. (1) or sub-s. (2). The principle behind the scheme seems to be that wrongs of certain classes which affect mainly a person in his individual capacity or character may be sufficiently redressed by composition with or without the leave of the Court as the case may be, but any such compostion would have the effect of an acquittal.

If a person is charged with an offence, then unless there is some provision for composition of it the law must take its course and the charge enquired into resulting either in conviction or acquittal. If composition of an offence was permissible under the law, the effect of such composition would depend on what the law provided for. If the effect of composition is to amount to an acquittal then it may be said that no stigma should attach to the character of the person, but unless that is expressly provided for, the mere rendering of compensation would not amount to the vindication of the character of the person charged with the offence

The effect of s 62 of the Assam Forest Regulation was not the same as that of S 345 (6) of the Criminal Procedure Code and the moral turpitude was involved.

Note:—Appeal of the department i e the Board of Revenue was allowed and Board was declared justified in taking departmental steps inspite of acquittal based on composition.

Biswahan Das Versus Gohen Ghendra Hayrika.
A.I R 1967 S.C. 895. (June Part) 1967 Cri L.J. 828. (1967) I.S.C J. 474

Concurrent Findings

The Court below having come to a definite finding on the evidence before them that the appellant Thakurprasad was a member of the unlawful assembly and took some part in inflicting injuries on Nem Singh in prosecution of their common object, Supreme Court cannot go behind the concurrent finding.

Thakur Prasad Vs The state of Madhya Pradesh
A.I.R. 1954 S.C. 30 · 1954 Cri. L J. 261

Condonation

The respondent filed their apperance within one month from the date of the service of the notice granting special leave by the Supreme Court on them, but beyond time from the date for whichthe notice was served on their Advocate. The said delay is not in the presentation of any appeal but only in following the procedural steps for making the case ready for disposal.
Held.
That the delay was not due to negligence on the part of the respondent. The appellant has not in any way been prejudiced by this delay. The delay was condoned.

The State of U. P. Vs. Sujan Singh and others
A I.R. 1964 S. C 1897 · 1965 (1 Cri. L J. 94

Conduct

1. Conduct of the persons who is not party to the action is not admissible.

Saidul Singh Vs. The State of Bombay.
A.I.R- 1957 S.C, 747 : 1957 Cri. L.J. 1325

2. A criminal trial is not an enquiry into the conduct of an accused for any purpose other than to determine whether he is guilty of the offence charged. Conduct which destroys the presumption of innocence can alone be considered as material.

Anant Chintaman Lagu Vs. The State of Bombay
A I.R. 1960 S. C 500 . 1960 Cri. L. J. 582

3. The entire conduct of the accused from the time he killed his wife upto the time the session proceedings commenced was inconsistent with the fact that he had a fit of insanity when he killed his wife.

Dahyabhai Chhaganbhai Vs. The State of Gujarat
A.I. R. 1964 S.C 1563 . 1964 (2) Cri. L.J. 472.

4. The appellant's conduct in purchasing a sword and delivering it stained with human blood to the Police and the appellant's confession to Ujagar Singh, fully establishes that the appellant did commit the muder of Sheo Sahai.

Ram Singh Vs State of Uttar Pardesh
A.I.R. 1967 S C. 152 : 1967 Cri L.J. 9

Confession.

(1) A co-accused who confesses is naturally an accomplice and the danger of using the testimony of one accomplice to corroborate another has repeatedly been pointed out. The danger is in no way lessened when the "evidence" is not on oath and cannot be tested by cross-examination. Prudence will dictate the same rule of caution in the case of a witness who though not an accom-

(*Confession-contd*)

plice is regarded by the Judge as having no greater probative value. But all these are only rules of prudence. So far as the law is concerned, a conviction can be based on the uncorroborated testimony of an accomplice provided the Judge has the rule of caution, which experience dictates, in mind and gives reasons why he thinks, it would be safe in a given case to disregard it.

Note Appeal against the charge of murder was allowed.

Kashmira Singh Vs. The State of Madhya Pradesh.
A I.R. 1952 S.C. 159

(ii) It is true that the retracted confession has only title value and that the confession of one accused is not evidence against co-accused tried jointly for the same offence but can only be taken into consideration against him. This deals with its probative value and has nothing to do with any repugnancy of the Constitution.

Kalawati Vs. The State of Himachal Pradesh
A.I.R. 1953 S.C. 131. 1953 Cri. L.J. 668

(iii) Statement of confession being given in immediate presence of magistrate. It will not be admissible in evidence if the magistrate does not record in the manner prescribed by S. 164 Cr. P. C.

Zwinglee Areel Vs. The State of Madhya Pradesh.
A.I.R. 1954 S. C 15 1954 Cri. L.J. 230.

(iv) Once the investigation had started any non-confessional statement made by the accused also required to be recorded in the manner indicated in Section 164 of Criminal P. C. and if no such record had been made by the magistrate, the magistrate would not be competent to give oral evidence of such statement having been made by the accused.

Rao Shiv Bahadur Singh Vs The State of Vindh- Pradesh
A.I R. 1954 S C. 322 1954 Cri. L.J. 910.

(v) **Recording of confession in Jail is an irregularity** but in this case the irregularity did not affect the voluntary character of the confession.
Note . See AIR 1957 S.C. 381 where confession recorded in Jail was ignored.

Hem Raj Vs. The State of Ajmer.
A.I R. 1954 S.C. 462 · 1954 Cri. L.J. 1313.

(vi) **Confession must be affirmatively proved** that such confession was free and voluntary and that it was not proceeded by any inducement to the prisoner to make a statement held out by a person in authority or that it was made after such inducement had clearly been removed

Hemraj Vs State os Ajmer
A.I R. 1954 S. C. 462 : 1954 Cri. L.J. 1313

(vii) A confession can be made during trial and the evidence already recordedmay be

(*Confession-contd*)

used to corroborate it It may be made in the committing court and materials already in the possession of the police may be used to corroborate it.

Hem Raj Vs. The state of Ajmer
A.I.R. 1954 S.C. 462 : 1954 Cri. L J. 1313

(viii) Confession of co-accused is not evidence as defined in section 3 and no conviction can be founded there on, but if there is other evidence on which a conviction can be based, that can be referred to as leading assurance to the conclusion and for fortifying it.

Nathu Vs. State of Uttar Pradesh
A.I R. 1956 S.C. 56 : 1956 Cri.L J. 152

(ix) Any attempt by a person in authority to bully a person into making a confession or any threat or coercion would at once invalidate confession if the fear was still operating on the mind of the accused at the time of making confession and if it would appear to him reasonably for supposing that by making it he would gain any advantage or avoid any evil of a temporal nature in reference to the proceedings against him.

Aher Raja Khima Vs. The State of Saurashtra
A.I R. 1956 S C 217 : 1956 Cri.L.J. 426

(x) The confession of one accused can be used against others if the confession implicates the maker substantially to the same extent as the other accused person against whom it is sought to be taken into consideration. Where on reading the confession as a whole it appears that he was really trying to throw the main blame on the other accused and make out that he was unwilling spectator, the confession cannot be used at all.

Balbir Singh Vs. The State of Pb.
A.I.R. 1957 S.C. 216 : 1957 Cri L.J.481

(xi) It would not be quite safe, as a matter of prudence if not of law, to base a conviction for murder on the confession of alleged murderer, by itself and without more it would be extremly unsafe to do so, when the confession is open to a good deal of criticism and has been taken in jail without adequate reasons and when the story of murder as given in the confession is some what hard to believe.

Ramyed Rai Vs. The State of Bihar.
A.I R. 1957 S.C 373 1957 Cri.L.J. 557:

(xii) The confession may ordinarily be recorded in open court and during court hours unless for exceptional reasons it is not feasible to do so.

Note. The confession recorded in jail was ignored).

Ramchandra Vs. The State of Uttar Pradesh
A.I.R 1957 S.C. 381 : 1957 CriL J. 559

(Confession contd)

(xiii Under section 30 confession of a co-accused can only be taken into consideration but it is not itself substantive evidence

A.I.R. 1957 S.C. 381 : 1957 Cri L J. 559

xiv Confession not relied in respect of offence u/s 302 I.P.C. there is no reason why the confession so far as it relates to the two offences of kidnapping and extortion should not be taken into consideration against the accused

A.I.R. 1957 S C. 381 · 1957 Cri.L.J 559.

(xv) The whole object of putting questions to an accused person who offers to confess is to obtain an assurance of the fact that the confession is not caused by an inducement, threat or promise having reference to the charge against the accused person as mentioned in section 24 of Evidence Act

Sarwan Singh Vs State of Pb.
A I R. 1957 S C. 637 1957 Cri L J. 1014

(xvi) It would be reasonable for courts to insist upon giving an accused person at least 24 hours to decide whether or not he should make a confession where there is reason to suspect that the accused has been persuaded to make a confession, even a longer period be given to him before his statement is recorded.

Note —Confession was ignored and the appeal was allowed

Sarwan Singh Vs State of Pb.
A.I.R. 1957 S.C. 637 . 1957 Cri. L.J. 1014

(xvii) That the confession was not placed in the fore-front as a piece of evidence against accused in the committing Court, such a default would not in any way show that the confession was involuntary.

Subramania Gaundan Vs The State of Madras
A.I.R. 1958 S C. 66 : 1958 Cri. L.J. 238

(xviii) Extra judicial confession if valuntary can be relied upon by the court along with other evidence in convincting the accused

Mulk Raj Vs The State of U.P.
A.I.R. 1959 S C. 902 . 1959 Cri. L J. 1219

(xix) A statement in documents suggesting the inference that he committed the crime cannot be held that the appellant admitted in terms the offence or all the facts constituting the offence of abetment.

Om Parkash Vs State of U.P.
A.I.R 1960 S.C. 409 : 1960 Cri. L J. 544

(xx) The court shall not rely on confession when from the evidence and circumstances in a particular case it may appear to the court that there was a threat,

(*Confession-contd*)

inducement or promise, though the said fact is not strictly proved

Pyare Lal Vs Uhe State of Rajastan
A.I.R. 1963 S.C. 1094 : 1963 (2) Cri. L.J. 178

21. The Supreme Court will not interefer under Art. 136 of the Constitution when three lower courts have held statement not caused by inducement, threat or promise.

Pyare Lal Vs The State of Rajasthan
A I.R. 1963 S.C. 1094 : 1963 (2 Cri. L J. 178

22. Confession recorded by 2nd class magistrate not specially empowered by the State Government to record a statement or Confession u/s 164 of the criminal Procedure code.

Held :—

The Confession is in-admissible and the confession can not be proved by the oral statement of Mr. Dixit (a magistrate). His oral evidence must be held inadmissible.

State of Uttar Pradesh Vs Silghara Singh
A.I R. 1964 S.C. 358 : 1964 (1) Cri. L.J. 263 (2)

23. Though confession may be regarded as evidence in that generic sense because of the Provisions of 30 of the Evidence Act. The fact remains that it is not evidence as defined by Section 3 of the Act.

Haricharan Vs The State of Bihar.
A.I.R. 1964 S.C. 1184 · 1964 (2) Cri. L J. 344

24. The confession only cannot be the sole ground of conviction.
(Note :—conviction was set aside).

A.I.R. 1964 S.C. 1184 · 1964 (2) Cri L J 344

25. The confession of a co-accused person cannot be treated as substantive evidence and can be pressed into service only when the court is inclined to accept other evidence and feels the necessity of seeking for an assurance in support of its conclusion deducible from the said evidence.

Haricharan Vs State of Bihar
A.I.R. 1964 S.C. 1184 (1199) 1964 (2) Cri L.J. 344

Confession -Exact words

(xxvi) The requirements of S. 243 of the Criminal Procedure Code are mandatory in character and a violation of these provisions vitiates the tial and renders the conviction legally invalid. The requirement of the section is not a mere empty formality but is a matter of substance intended to secure proper administration. of justice. It is important that the terms of the section are strictly

(*Confession-contd*)

complied with because the right of appeal of the accused depends upon the circumstance whether he pleaded guilty or not and it is for this reason that the legislature requires that the exact words used by the accused in his plea of guilty should, as nearly as possible, be recorded in his own language in order to prevent any mistake or misapprehension.

Note : Appeal of the accused was allowed.

Mahant Kausahlya Das Vs State of Madras
A.I.R. 1966 S C. 22 (pare 6). 1966 Cri. L J. 66

Confession-murmering

(xxvii) Communication of statement of offence to another is not a necessary ingredients of the concept of confession. In this case the accused murmured to himself about the comission of offence which was over heard by the P.Ws. was held sufficient for maintaining the conviction.

Note · This extra-judicial confession is relevant and corroborates the circumstantial evidence. Conviction was upheld.

Sahoo Vs. state of Uttar Pradesh
A.I.R. 1966 S.C. 40 : 1966 Cri L. J. 68

(xxviii) Mere conferment of powers of investigation in to criminal offences under section 9 of the seacustom Act does not make the Central Excise Officer a police officer even in the broader view. Otherwise any person entrusted with investigation under section 202 of the Cr. P C would become a police officer. The statement made by the appellant to the Deputy Superintendent of Customs and Excise would not be hit by sce? 25 of the evidence Act and would be admissible in evidence unless the appellant can take advantage of Section 24 of the Evidance Act As to that it was urged on behalf of the appellant in the High Court that the confessional statement was obtained by threat. This was not accepted by the High Court and therfore Section 24 of the Evidence Act has no application in the present case.

Note : In this case the contention of the appellant that the statment was obtained by threat, was ruled out Central Excise Officer is not a Police Officer. within S. 25 of the E. Act.

Badaku Joti Svant Vs State of Mysore
A.I.R. 1966 S.C. 1746 (Page 1749-50) 1966 Cri. L J. 1353

Confiession Retracted

(i) It is a settled rule of evidence that unless a retracted confession is corroborated in material particulars, it is not prudent to base a conviction in a criminal case on its strength alone.

Note : The accused was acquitted. Appeal against conviction was allowed.

Purn Vs The state of Punjab
A.I.R. 1953 S.C. 459 : Cri. L.J. 1925

(ii) Though confession is inculpatory, yet corroboration is necessary for the retaction confession.

Note : Appeal was allowed.

Pangambam Kalanjory Singh Vs State of Manipur
A.I.R. 1956 S C. 9 : 1956 Cri. L. J. 126

(Confiession Retiacted-contd)

(iii) The confessions where retracted subsequently the proper approach is to consider each confession as a whole on its merits and use it against the maker thereof. Provided the court is in a position to come to an unhesitating conclusion that the confession was voluntary and true only then it can form the basis of conviction and it should be corroborated by the independent evidence.

Note . Confession was relied upon.

Balbir Singh Vs The State of Pb.
A.I.R. 1957 S. C. 216 : 1957 Cri. L J. 481

(iv) It is open to the court to convict an accused on accuseds confession itself although he has retracted the same at a later stage but corroboration is necessary.

Note : Confession was not relied upon, the accused was acquitted.
ii Corroboration was missing.

Sarwan Singh Vs. State af Pb
A.I R. 1957 S.C. 657 Cri. L J. 1014

(v) In the case of a person confessing who has resiled from his statement, general corroboration is sufficient while an accomplice's evidence should be corroborated in material particulars.

Subramania Goundan Vs. The State of Madras
A.I R. 1958 S.C. 66. 1958 Cri. L.J. 238

(vi) The evidence act nowhere provides that if the confession is retracted, it cannot be taken into consideration against the co-accused or the confessing accused. Accordingly, the provisions of the Evidence Act do not prevent the court from taking into consideration a retracted confession against the confessing accused and his co-accused.

Note · Retracted confession was relied upon and the conviction was maintained.

Ratan Gond Vs. The State of Bihar
A.I.R. 1959 S.C. 18 : 1959 Cri. L.J. 108

Confession Voluntary.

The only circumstance that it took about two to three houses from the time when the appellant was brought to the house of mukhia up to the time when the accused made his confessional statement, is not sufficient to hold confession an unvoluntary.

Ratan Gond Vs. State of Bihar
A.I.R. 1959 S.C. 18 · 1959 Cri. L.J. 108

Confession Extra Judicial.

(i) Courts as a matter of caution requires some material corroboration to an extra judicial confession.

(Note . Extra judicial confession was relied upon)

A.I.R. 1959 S.C. 18 : 1959 Cri. L J. 108

(ii) Extra judicial confession, if volontary can be relied upon by the court along with other evidence in convicting the accused.

Note : Conviction was maintained.

Mulkh Raj Vs. The State of U.P.
A.I.R. 1959 S.C. 902 : 1959 Cri: L J. 1219

(iii) Murmering amounts to extra-Judicial confession see 1966 S.C. 40 & 1966 Cri. L.J. 68

Confessional statement

(i) According to the prosecution, on being interrogated the appellant produced a box from a pond and handed over the same to the Sub-Inspector. He also produced a key from out of a bunch of keys before the Sub-Inspector and that key fitted the lock of the complainant which had been sent for. The Sub Inspector took into possession both the key and the lock.

The recovery memos of the statements in regard to the key was this that the appellant handed over the key and said that he had opened the lock of the shop of the complainant with that key. The handing over of the key is not a confessional statement but the confession lies in the fact that with that key the shop of the complainant was opened and, therefore that portion will be inadmissible in evidence and only that portion will be admissible which distinctly relates to the fact discovered i.e. the finding of the key. Similarly the recovery of the box is provable because there is no statement of a confessional nature in that memorandum.

Kameshwari Prasad Vs. Union of India
A.I R. 1962 S.C. 1116 : 1962 (2) Cri. L J. 251

Confirm, consider

(ii) The High Court should consider the evidence carefully and record its conclusions clearly after dealing with all the points urged before it by the counsel for the defence.

Gurcharan Singh Vs. State of Pb.
A.I R. 1963 S.C. 340 : 1963 (1) Cri. L.J. 323

(iii) The High Court has not confirmed the sentence of death but Supreme Court in exercise of power u/Art. 136 of the Constitution passed the same order of confirmation of sentence of death as the High Court was competent to do.

A.I.R. 1960 S.C. 1125 : 1960 Cri. L.J. 1504

(iv) In dealing with appeals or reference proceedings where the question of confirming a death sentence is involved, the High Court has to deal with the matter carefully and to examine all relevant and material circumstances before upholding the conviction and confirming the sentence of death-Where the judgment of the High Court shows that the arguments which were urged on behalf of the appellants, have been carefully examined the evidence given by the respective witnesses has been accurately summarised and the infirmities in the said evidence closely scrutinised, the relevency of enemity between the

two parties has been taken into account it cannot be said that the High Court did not bestow due care and attention on the points involved in the case.

Masalti Vs. The State of Uttar Pradesh
A.I.R. 1965 S.C. 202 : 1965 (1) Cri. L.J. .226

Confirmation Order

It is difficult to divorce the order of detention from the order of confirmation, for without confirmation the order of detention would have no legal sustenance The Ru'e provides that the order of detention shall forthwith be reported, if made by an officer empowered by tne Administrator, to the administrator and that the Administrator shall, after taking into account all the circumstances of the case, either confirm the detention order or cancel it. It is pursuant to the detention order so confirmed, that a person remains detained,

Sadhu Singh Vs. The Delhi Administration
A.I.R. 1966 S.C 91

Confiscation.

The use of the word "shall" does not always mean that the enactment is obligatory or mandatory. S.11 of Opium Act (as aplicable to Madhya Pradesh) is not obligatory but it is for the court to consider in each case whether the vehicle in which the contraband opium is found or is being transported should be confiscated or not, having regard to all the circumstances of the case.

Note Third party i.e. M/S Azad Bharat Co. who is the owner of truck got the possession of truck and the same was not confiscated.

M/S Agad Bharat Finance Co. another Vs. State of Madhya Pradesh
A.I R. 1967 S.C. 1967 Cri L.J. 285 (1966) 2 Sc A 336

Confrontation

(i) Statement of witness in the committal court cannot be used in the Session court unless the witness is confronted with his previous statement as required by section 145 of Evidence Act

Tara Singh Vs. The State
A.I R 1951 S.C. 441 : 52 Cri.L J 1491

(ii) Where the previous statement is long one, one and only one or two small passages in it are used for contradiction, then whole of the statement is read over. This method confuses the witness and not be a fair method of affording him an opportunity to explain. All that is required is that the witness must be treated fairly and be afforded a reasonable opportunity of explaining the contradictions after his attention has been drawn to them in a fair and reasouable manner.

Bhagwau Singh Vs The State of Pb.
A I R. 1952 S C. 214 (para 26) : 1952 Cri. L.J. 1139

Consent

(i) It is not an improper exercise of discretion for the court to grant consent before evidence is taken, if it was reasonably satisfied otherwise, that the evidence if actually taken, is not likely to result in conviction.

The State of Bihar Vs Ram Naresh
A.I.R. 1957 S.C. 389 : 1957 Cri. L.J. Page 567

(ii) On the terms of section 20 (1) of the Prevention of the Prevention of Food adulteration Act a prosecution can be instituted with the written consent not merely of the State Government but of a local authority."

A.I.R. 1961 S C. 1 : 1961 (1) Cri. L.J. 170

(iii) Consent not specifying the name of the complainant is not a statutory requirement. Cansent being to a specified Prosecution is valid.

State of Bombay Vs Parshattam Kanaiyalal
A.I.R. 1961 S.C. 1 : 1961 (1) Cri. L J. 170

Consequences

Every one is presumed to know the natural consequences of his act. Similarly every one is presumed to the law. These are not facts which the prosecution has to establish.

Bhikari Vs The State of Uttar Pradesh
A.I.R. 1966 S.C. 1, 1966 Cri. L.J. 63

Conspiracy

(i) The position in law is, clear that on the charge as it was framed against the accused Nos. 1,2,3 and 4, the accused No. 1 can not be convicted of the offence under S. 120 B Penal Code, when his alleged co-conspirators accused 2,3 and 4 are acquitted of that offence.

Topandas Vs State of Bombay
A.I.R 1956 S.C. 33 : 1956 Cri. L.J. 135

(ii) It is not essential that more than one person should be convicted of the offence of Criminal Conspiracy. It is enough if the court is in a position to find that two or more persons were actually concerned in the criminal conspiracy.

Bimbadhar Pradhan Vs State of Orissa
A.I R. 1956 S.C. 469 : 1956 Cri. L.J. 831

(iii). The very fact of conspiracy constitutes the offence and it is immaterial whether any thing has been done in pursuance of the unlawful agreement.

A.I R. 1956 S.C. 469 : 1956 Cri. L.J. 831

(*Conspiracy-contd*)

(iv) If a specific instance of cheating was proved beyond doubt against any of the accused that would furnish the best corroboration of the offence of conspiracy, because conspiracy was the root and the specific instance were the fruit.

(Note :—This offence of conspiracy was proved).

Swamiratbnam Vs State of Madras
A.I.R. 1956 S.C. 340 : 1957 Cri L.J. 422

(v) Conspiracy to commit an offence is itself an offence and a person can be separately charged. There may be an element of abetment in a conspiracy, but conspiracy is some thing more than abetment.

The State of Andhra Pradesh Vs Kandimalla.
A.I.R. 1961 S.C. 1241.

(vi) The court trying the offence of criminal conspiracy has jurisdiction to try all the overt acts committed in pursuance of that conspiracy.

Purshotamdas Vs. State of West Bengal
A.I.R 1961 S.C. 1589 : 1961 (2) Cri. L.J. 628

vii) It is not necessary that each member of a conspiracy must know all the details of the conspiracy

R. K Dalmia Vs, The Delhi Administration
A I R 1962 S.C. 1821 : 1962 (2) Cri L.J. 805

(viii) A court trying an accused for an offence of conspiracy is competent to try him for all offences committed in pursuance of that conspiracy irrespective of fact that any or all the other offences were not committed within its territorial jurisdiction. The Special Judge, Poona. could try the appellants with respect to the offence of cheating and abetment thereof in connection with the supply of wood to places outside Kerala, and for the obtaining of the price of that wood.

Banwarilal Vs. Union of India
A.I R. 1963 S C. 1620 . 1963 (2) Cri L J. 529

(ix) It is permissible to frame a charge of conspiracy when the matter has proceeded beyond the stage of conspiracy and that in pursuance of it offences have actually been committed.

The State pf Andhra Pradesh Vs. Cheemalapati
A.I.R 1963 S.C. 1850 : 1962 (2) Cri. L J. 671

(x) Once a reasonable ground for the existence of a conspiracy is established, any thing said, done or written by one of the conspirators in reference common intention, is relevant against the other not only for the purpose of proving the existence of conspiracy but also for proving that the other person was a party to it.

Bhagwan Swarup Vs. The State of Maharashtra
A.I R. 1965 S.C. 682 : 1965 (1) Cri. L J. 608

(*Conspiracy-contd*)

(xi) The mere fact that the licences were issued in the name of eight different companies does not make out the case against the appellant and other conspirators to be a case of eight different conspiracies each with respect to the licences issued to one particular factitious company.

Srichand K. Khetwani Vs. State of Maharashtra
A.I R 1967 S.C. 450 1967 Cri. L.J. 414

(xii) Though the charge under Section 120-B required sanction, no such sanction was necessary in respect of the charge under S. 409. At the most, therefore, it can be argued that the Magistrate took illegal cognizance of the charge under S. 120-B as S. 196-A (2) prohibits entertainment of certain kinds of complaints for conspiracy punishable under S. 120-B without the required sanction The absence of sanction does not prevent the Court from proceedings with the trial if the complaint also charges a co-conspirator of the principal offence committed in pursuance of the conspiracy or for abetment by him of any such offence committed by one of the co-conspirators under S. 109 of the Penal Code.

The fact that sanction was not obtained in respect of the complaint under S. 120-B do not vitiate the trial on the substantive charge under S. 409. No prejudice could be said to have resulted in view of the appellant's confession that he had in fact misappropriated Rs. 2,500 and was prepared to deposit that amount:

Madan Lal Vs. The State of Pb.
A I-R. 1967 S.C. 1590. 1967 Cri. L.J. 1401

Constitution.

(i) The Constitution has no retrospective effect and even if the law is in any sense discriminatory, it must be held to be valid for all past transactions and for enforcement of rights and liabilities occured before the coming into force of the constitution.

Habib Mohammad Vs. The State of Hyderabad.
A.I.R. 1953 S.C. 287 . 1953 Cri. L J. 1158

(ii) Article 20 (2) of the Constitution incorporate within its scope of plea of "autrefois convict" as known to the British jurisprudence or the plea of double jeopardy as known to the American Constitution but circumscribed it by providing that there should be not only a prosecution but also a punishment in the first instance in order to operate as a bar to a second prosecution and punishment for the same offence.

S R. Das Vs. State of Bombay
A.I.R. 1953 S.C. 325 · 1953 Cri. L.J. 1432

(*Constitution-contd*)

(iii) Section 8 of Jammu and Kashmir Preventive Detention is not in excess of or inconsistent with the Provision of cl (c) added to Art. 35 of the Constitution.

P.L. Lakhanpal Vs, State of Jammu and Kashmir
A.I.R. 1956 S C. 197 : 1956 Cri L.J. 421

(iv) S. 30 of the Criminal Procedure is not inconsistent with Art. 14 of the constitution.

Budhan choudhry Vs State of Bihar
A.I.R. 1955 S.C. 191 : 1955 Cri. L J. 374

(v) Where an assessee has been arrested and is being detained in Jail in execution of a warrant of arrest issued under section 13 of the Bombay City Land Revenue Act 1876 for the **recovery** of the demand certificate u/s 46 (2) of the Income Tax Act, no complaint can be made of infringment of Art 21 as S. 13 of Bombay City Land Revenue Act and S. 46 (2) of the Income Tax constitutes the procedural law.

Purshottam Vs B.M. Desai Additional collector of Bombay
A.I R. 1956 S.C. 20 : 1956 Cri. L.J. 129

(vi) If the State has evolved the three tier system of giving promotion from constables to head-constables, from head-constables to Sub Inspectors and from Sub Inspectors to Inspectors, which is done in the interest of administrative efficiency of the police force, it cannot be said that such a system should be struck down on the ground that the police force being one for the whole State, promotion throughout from constable upwards whould be on the basis of the whole State. So it does not contavene Arts 14 and 16 of the constitution.

Ram Saran Vs The Dy. Inspector General of police Ajmar
A.I.R. 1964 S.C. 1559

(vii) Sec. 292 of the Indian Penal Code can not be said to be invalid in view of second clause of Art.19 of the Constitution.

Ranjit D. Udeshi Vs The State of Maharashtra
A.I.R. 1965 S.C. 881 · 196 5(1) Cri. L J. 8

(viii) Law only punishes the aggravated form of insult to religion when it is perpetrated with the deliberate and malicious intention of outraging the religious feelings of that class. The calculated tendency of this aggravated form of insult is clearly to disrupt the public order, the section, which penalises such activities, is well within the protection of cl. (2) of Art. 19 as being a law imposing reasonable restrictions on the exercise of the right to freedom of speech and expression guaranteed by Art. 19 (1) (a) of the constitution.

Ramji lal Vs State of U.P.
A.I R. 1957 S.C. 620 : 1957 Cri L.J. 1006

(*Constitution-contd*)

(ix) The Legislature has provided for a clear classification between the two kinds of proceedings at the commitment stage i. e. u/s 207 and u/s 207 A of the Code. These provisions do not violate Art. 14 of the Constitution.

Macherla Hanumantta Vs The State of Andhra Pradesh
A.I.R. 1957 S.C. 927

(x) The provisions of the section 124 A and 505 of Indian Penal Code impose restrictions on the Fundamental Freedom of speech and expression, but these restrictions cannot but be said to be in the interest of Public order and are within the ambit of permissible legislative interference with that fundamental rights.

Kedar Nath Singh Vs The Stare of Bihar
A.I R. 1962 S.C. 955 : 1962 (2) Cri. L.J. 103

(xi) It is well settled that certain provisions of law if construed in one way would make them consistent with the Constitution and another interpretation would render them unconstitutional, the Court would lean in favour of the former construction.

Kedar Nath Singh Vs The State of Bihar
A.I R. 1962 S.C. 955 : 1962 (2) Cri. L.J. 103

(xii) Each Constitutent of Section 505 ofPenal Code has reference to and a direct effect on the security of State or Public Order. The provision would not exceed the limit of reasonable restriction on the freedom of speech and expression.

A.I.R. 1962 S.C. 955 : 1962 (2) Cri L.J. 103

(xiii) Art. 359 of the Constitution is capable of only one construction. Art. 359 creates a bar which precludes the detenues from moving the High Court u/s 491 (1) (b) of Criminal Procedure Code.

Makhan Singh Vs The State of Pb.
A I.R 1964 S C. 381 : 1964 (1) Cri L.J. 269.

(viv) The suspension of Art. 19 is complete during the period in question Legislative and executive action which contravenes Art 19 cannot be questioned even after the emergency is over.

A.I.R. 1964 S.C. 381 1964 (1) Cri. L.J. 269

xv). The order of the High Court cancelling the bail and depriving the appellant of his personal liberty is according to the procedure established by law and is not violative of article 21 of the Constitution.

A.I.R. 1967 Supreme Court 1639 (Nov. Part). 1967 Cri. L J 1576

Construe

(i) The presumption that the same words are used in the same meaning is however very slight, and it is proper if sufficient reasons can be assigned to construe a word in one part of the act in a diffierent sense from that which it bears in another part of the Act.

Shamrao Vishnu Parulekar Vs The District Magistrate Thana
A.I.R. 1957 S C. 23 : 1957 Cri L J. 5

(ii) It is legitimate to construe the Code with reference to the modern needs, wherever this is pe missible, unless there is anything in the Code or in the particular section to indicate the contrary.

Mobarik Ali Ahmed Vs State of Bombay
A.I.R. 1957 S.C. 857 : 1957 Cri. L J. 1346

(iii) It is the duty of the Court in Construing a statute to give effect to the intention of the legistatrre. The court can depart from the dictionary meaning or even the popular meaning of the word and instead give it a meaning which will advance the remedy and suppress the mischief.

Kanwar Singh Vs The Delhi Adminstration
A.I.R. 1965 S.C. 871 : 1965 (2) Cri. L.J. 1

Construction

(i) Article 359 of Constitution is capable of only one construction. That is Art. 359 creates a bar which precudes the detenues from moving the High Court U/s 491 (1) (b) of Criminal Procedure Code.

A.I.R. 1964 S.C. 381 : 1964 (1) Cri. L J. 269

(ii) If the words are capable of two constructions, one of which is more favourrable to the accused then the other, the court will be justified in accepting one of which is more favourable to the accused.

Harishankar Bagla Vs State of Madhya Pradesh.
A.I.R. 1964 S.C. 464 : 1964 Cri. L.J. 310.

Consultation

The High Court was in error in holding that Consultation with the Board u/s 6A (6) of the Bombay Prohibition Act was a condition precedent to the launching of prosecut on against the respondents.

State of Bombay Vs Narandas Mangilal
A.I R. 1962 S.C. 579 : 1962 (1) Cri. L.J. 512.

Consumer

If appellant becomes comes co-owner by reason of the purchase of the mill, even though he may not be entered as such must be regarded as consumer.

Ram Chandra Vs The State of Bihar
A.I.R. 1967. S.C. 349 : 1967 Cri. L.J. 409

Contempt of court

(i) The conduct of the Secretary of the Congress Committee in writing a recommendatory letter about the facts of the case to the District Magisrate was undoubtedly a communication for the purpose of influencing his decision and was rightly reprobated by the High Court. Such a course is calculated, if tolerated, to divert the course of justice and ought more frequently than it is, to be treated as what it really is, namely, a high contempt of Court.

Rizwan UL. Hasan Vs State of Uttar Pradesh
A.I.R. 1953 S.C. 185 : 1953 Cri. L J. 911

(ii) The Jurisdiction in contempt is not to be invoked unless there is real prejudice which can be regarded as a substantial interference with the due course of justice and that the purpose of the Courts action is a practical purpose and the Court will not exercise its jurisdiction upon a mere question of propriety.

A.I.R. 1953 S.C. 185 : 1953 Cri. L.J. 911

(iii) Counsel who signs applications or pleadings containing matter scandalizing the court without reasonably satisfying themselves about the prima facie existence of adequate grounds there of, with a view to prevent or delay the course of justice, are themselves guilty of contempt of court because it is not the duty of a counsel to his client to take any interest in such applications.

M.Y. Shareef Vs. Han''ble Judges of the Nagpur Hight Court
A.I.R. 1955 S.C. 19 : 1955 Cri. L.J. 133

(iv) Where an order disobeyed could be reasonably construed in two ways and the subordinate court construed it in one of those ways but in a way different from that intended by Superior court. So subordinate court has not committed contempt of court as the intention of disobeying was not there.

B.K. Kar Vs. Hon'ble the chief justice of Orissa High Court
A.I.R. 1961 S.C. 1367

(v) There is nothing in S. 528, Criminal Procedure Code, which disables a Magistrate from taking action unless he is set in motion by the petition of one of the parties and nothing in the Code prevents any person from bringing facts to the notice of the District Magistrate which might suggest to that Magistrate that it was advisable to see whether the Magistrate should remain in charge of a particular case.

Note : Third party does not commit contempt of court by making an application for transfer to D.M.

Rizwan ul. Husain Vs. The State of Uttar Pradesh
A I.R 1953 S C. 185 : 1953 Cri.L.J. 911

(vii) Contempt is a special subject and the jurisdiction is conferred by a Special set of laws peculiar to courts of records. The words "any other law" in section

(*Cantempt of court-contd*)

5 of the criminal procedure code do not cover contempt of a kind punishable summarily by the High Court.

Sukhdev Singh Vs. Honble C.J. S. Teja Singh High Court Patiala
A.I R. 1954 S.C. 186 *1954 Cri.L.J. 345*

(vii) Every High Court in India has jurisdiction to punish for contempt. This jurisdiction is inherent in a court of records from the very nature of the court itself.

A.I R. 1954 S.C. 186 : 1954 Cri.L.J 345

viii) The appellants knew that an interim order of stay had been made by the High Court on May 16, 1958; There-after the appellants were informed not merely by interested parties but by an Advocate, who was an officer of the Court, that the High Court had extended the stay order up to May 23, 1958 A formal application supported by an affidavit was also made to that effect.

Held :

That the appellant had no real reasons for doubting the authenticity of the order. **There was a wilful disobedience of the order of the High Court staying** delivery of possession, even though the appellants might have wrongly but honestly believed that it was not safe to act on the information given by them,

Hoshiar Singh Vs. Gurbachan Singh
A.I.R. 1962 S.C. 1089 : 1962 (2) Cri.L J. 236

(ix) In the departmental charge-sheet it was stated that the respondent had gone to a court of law before exhausting all his departmental remedies and this was contrary to official propriety and subversive of good discipline.

Held : It amounted to an obstruction of the judicial process and interfered with the course of justice in respect of the suit which was pending in the court of the Senior Subordinate Judge, Amritsar, a Court subordinate to the High Court. So the contempt of the court has been committed.

A.I R 1962 S.C. 1172 : 1962 (2) Cri L.J. 262

(x) The use of threats, by letters or otherwise to a party while his suit is pending or abusing a party in letters to persons likely to be witnesses in that case, have been held to be contempt.

Commissioner of Income Tax Vs. Chuni lal
A.I.R. 1962 S.C. 1172 : 1962 (2) Cri. L J. 262

(xi) The provisions of Ss. 87 and 88 of the Criminal Procedure Code would not

(*Contempt of Court-contd*)

be available to secure the presence of a person who is alleged to have committed contempt.

Mrs. V.G. Peterson Vs O. V. Forbes
A.I.R. 1963 S.C. 692 : 1963 (1) Cri. L.J. 633

(xii) The High Court's commitment for contempt was justified because the High Court rightly reached the conclusion that the appellant having the knowledge of the where-abouts of Kaniz Fatima and having the custody of her through another was wilfully and deliberately disobeying the direction of the Court.

Mohd. Ikram Hussain Vs State of Uttar Pradesh
A.I.R. 1964 S.C. 1625 : 1964 (2)Cri L.J. 590

(xiii) The State Govt. commits contempt of the Court by serving the petitioner, during the pendency of a petition under Section 527 Cr. P. C. in the Supreme Court, with a notice and a charge sheet to show cause why he (petitioner) should be not proceeded against for breach of Rule 8 of All India Services.

As the State Government has put pressure on the petitioner, and it would have hampered the petitioner in prosecuting the petition freely before the Supreme Court and would have resulted in obstruction of administration of justice.

Note —An unqualified apology was acclpted.

Gurcharan Dass Vs. State of Rajasthan
A I R. 1966 S C 1418 : 1966 Cri. L.J. 1071

(xiv) The subordination for the purpose of Sec 3 of the Contempt of Courts Act means judicial subordination and not subordination under the hierarchy of Courts under the Civil Procedure Code or the Criminal Procedure Code. That "subordinate Courts" have been dealt with in Chap. VI of the Constitution and Art. 235 of the Constitution gives the High Court "the control over District Courts and Courts subordinate thereto" by providing for powers like the posting and promotion, and the grant of leave to persons belonging to the judicial service of a State Such control is not judicial control and a Court may be subordinate to a High Court for purposes other than judicial control.

Thakur Jugal Kishore Vs. The Sitamarhi Central Co-operative Bank Ltd.
A.I.R. 1967 S.C. 1494 : 1967 Cri. L.J. 1380

(xv) The appellant preferred an appeal to the Joint Registrar of Co-operative Societies against the order of the Assistant Registrar who was made respondent No. 2 in the appeal. One of the grounds of appeal ran as follows :

"For that the order of respondent No. 2 is malafide in as much as after receiving the order of transfer he singled out this case out of so many for

(*Contempt of Court-contd*)

disposal before making over charge and used double standard in judging the charges against the defendants Nos. 1 and 2.

Held :

There can be no doubt that the words used in this case in the grounds of appeal clearly amounted to contempt of Court provided the Assistant Registrar was a Court and the Contempt of Courts Act was applicable to the facts of the case.

Held :

That the Assistant Registrar was functioning as a Court in deciding the dispute between the bank and the appellant. It must be borne in mind that all the Registrars of all co-operative Societies in the different states are not "Courts" for the purpose of contempt of courts Act, 1952 This decision is expressly limited to the Registrar and the Assistant Registrar like the Bihar and Orissa Co-operative Societies Act.

Thakur Jugal Kishore, Sinha Appellant
Vs.
The Sitamarhi Central Co-operative Bank
A.I.R. 1967 Supreme Court 1494, 1967 Cri. L J. 1380.

Competent Court

Where a court says, though erroneously, that it was not competent to take cognizance of the offence it has no power to acquit that person of the offence An order of acquittal made by it is in fact a nullity.

Under the common law a plea of autre-fois acquit or convict can only be raised where the first trial was before a court competent to pass a valid order of acquittal or conviction. Unless the earlier trial was a lawful one which might have resulted in a conviction, the accused was never in jeopardy-

Note :—In this case Magistrate in the first case could take cognisance and framed the charge, examined the witnesses and the accused U/s 342 but during arguments on the basis of one un-reported ruling of High Court Magistrate held that he had no option but to acquit because of the Judgment. This was erroneous view So the first trial which ended wrongly in acquital is no bar to the Second.

Mohmmad Sali Vs. The State of West Benga
A.I R. 1966 S C. 69, 1966. Cri. L J. 71, 1965. S.C. D. 8701

Contradiction.

(i) A witness cannot be contradicted by first supposing that a certain thing must have taken place in a manner not deposed to by the witness and then to find that that was not consistent with the statement made by that witness.

R.K. Dalmia Vs. The Delhi Administration.
A.I.R. 1962 S.C. 1821 : 1962 (2) Cri. L J. 805

(*Contradiction*)

(ii) The Court, can permit a person, who calls a witness, to put questions to him which might be put in the cross-examination at any stage of the examination of the witness, provided it takes care to give an opportunity to the accused to cross-examine him on the answers elicited which do not find place in the examination-in-chief. In the present case what happened was that some of the witnesses faithfully repeated what they had stated before the police in the examination-in-chief, but in the cross-examination they came out with the story of insanity of the accused. The court, at the request of the Advocate for the prosecution, permitted him to cross-examine the said witnesses.

The procedure followed by the learned Judge does not conflict with the express provisions of S. 154 of the Evidence Act.

Dakyabhai Chhaganbhai Vs. State of Gujarat
A.I.R. 1964 S C 1563 : 1964 (2) Cri. L.J. 472

(iii) The witnesses before the Police stated that the accused came out of the room with a blood-stained knife in his hand and admitted that he had murdered his wife ; but in the witness-box they said that when the accused came out of the room he was behaving like a mad man and giving imaginary reasons for killing his wife. The statements mad in the depositions are really inconsistent with the earlier statements made before the police and they are, therefore contradictions within the meaning of S 162 of the Code of Criminal Procedure

Note .—No reliance was placed, on the evidence of such witnesses in 1964 S.C. 1563 Case.

A.I R. 1964 S.C. 1563 : 1964 (2) Cri. L J. 472

Control Price

As there is no legal proof of what was the controlled price of cement on the date of the sale by the appellants, they can not be convicted of offence with which they had been charged.

Salekh Chand Vs State of Uttar Pradesh.
1960 S.C. 283 : 1960 Cri. L.J. 423.

Conviction

(i) Conviction under sections 302-307 and 149 can be converted into one under section 302,307 and 34. I.P.C

Kartar Singh Vs State of Pb.
A.I R. 1961 S.C. 1787 : 1961 (1) Cri. L J. 853.

(Conviction-contd)

(ii) It is open to the Session Judge to charge the appellant alternatively under ss. 307 and 326, Penal Code. The case falls under S 237, Criminal P.C. and the appellant's conviction under Sec. 326, Penal Code, was proper even in the absence of a charge.

Bejoy Chand Vs State of West Bengal.
A.I.R. 1952 S.C. 105 : 1961 Cri. L.J. 644.

(iii) The accused was acquitted on the charges of murder, conspiracy and kidnapping. His conviction on the charge that some twelve hours after the crime he assisted in removing the body from the scene of occurance i e. u/s 201 I.P.C. without further charge, is not illegal.

Kashmira Singh Vs The State of Madhya Pradesh.
A I R. 1952 S.C. 159.

(iv) Conviction of the accused cannot be based merely on his statement u/s 342 Cr.P.C. which cannot be regarded as evidence.

Vijendrajet Vs The State of Pb.
A.I R. 1953 S.C 247 ; 1953 Cri. L.J. 1097.

Note :—Statement u/s 342 Cr. P.C. was referred in support of the Prosecution in case A I R I. 9535 S.C. 247)

(v) Where it is possible to conclude that though five persons were unquestionably at the place of offence, the identity of one or more is in doubt, conviction of the rest with the aid of section 149 I.P.C. is good.

Dalip Singh Vs The State of Pb.
A.I R. 1953 S.C. 364 : 1953 Cri. L J. 1465.

(vi) If it is held proved that all the appellants were seen at the spot at that time of firing, this fact by itself, could not be held enough to prove a common intention of the appellants to murder Sunder. It can well be that these four persons were standing together and one of them suddenly seeing Sunder fired at him. This possibility has not been eliminated by any evidence on the record. In such a situation when it would not be known who fired the fatal shot, none of such persons can be convicted of murder u/s 302 I.P.C

Ram Nath Vs State of Madhya Pradesh.
A.I.R. 1953 S.C. 420 : 1963 Cri. L.J. 1772.

(vii) When the accused are acquitted of riot and the charge for being members of an unlawful assembly fails, there can be no conviction of any one of them for an offence which he had not himself committed.

A.I.R. 1955 S.C. 274 : 1955 Cri. L.J. 721.

(viii) For the application of Section 34 if it is found that appellant shared the common intention to kill and actually participated by being present at the

(*Conviction-contd*)

spot with lathi, then he is as much guilty of the whole act as is his co-accused who gave the fatal blow.

Rish'deo Pande Vs State of Uttar Pradesh.
A.I.R 1955 S C. 331 : 1955 Cri. L.J. 873.

(ix) Where the death sentence has been awarded in the trial court by distinguishing this appellant from all the other accused in respect of his individual act by way of pistol fire, it is difficult to say that the accused has not been prejudiced by the absence of specific charges under Ss- 307 and 302 I.P.C.

(Note :—Conviction and Sentence u/s 302 and 307 was set aside).

Suraj Pal Vs State of Utter Pradesh.
A.I.R. 1955 S.C. 419 : 1955 Cri. L J. 1034

(x) The appellant was not charged for having committed the murder himself, nor does the evidence indicate that he was charged for having shared the common intention of four named persons and for having participated in the crime. If these four persons are all acquited, the element of sharing a common intention with them disappears; and unless it can be proved that he shared a common intention with the actual murderer or murderers, he cannot be convicted with the aid of S. 34, IPC.

Prabhu Babaji Novle Vs State of Bombay.
A.I.R. 1956 S.C 51 : 1956 Cri. L J. 147.

Conviction—Corpus delicti

(xi) A conviction for an offence does not necessarily depend upon the corpus delicti being found. There may be reliable evidence, direct or circumstantial, of the commission of the murder though the corpus delicti are not traceable

Note :—(Conviction u/s 302 and 201 I.P.C. was set aside)

Ram Chandra Vs State of Uttar Pardesh.
A I.R. 1957 S.C. 381 . 1957 Cri. L J

(xii) Conviction of an accused person u/s 420 I.P C would be valid though the charge is u/s 420 read with section 34 unless prejudice is shown to have occured.

Mobarik Ali Ahmed Vs. State of Bombay
A I.R. 1957 S.C. 857 : 1957 Cri.L,J 1346

(xiii) That the fire arm expert made the necessary tests and was careful in what he did. There was no reason for distrusting him.

The learned Judges were justified in coming to the conclusion that the cartridges Ex. 1 found near the cot of deceased was fired from the pistol Ex. 111

(*Conviction-contd*)

produced by the appellant and so no body else has shot the deceased Accused was rightly convicted.

Note .—On this sole evidence, the accused was convicted u/s 302 I P C.

Kalua Vs. State of Uttar Pradesh
A.I R 1958 S.C. 180 : 1958 Cri.L J 300

(xiv) Alteration of the conviction from Section 299 to Section 300 of Calcutta Municipal Act of 1923 read with 488 was no alteration in the subtance of the accusation but in the section more applicable to the facts found.

Nawi Gopal Vs. Municipalty of Hawrah.
A I R. 1958 S C. 141 : 1958 Cri L.J. 271.

(xv) That the offence of criminal intimidation was committed by threatening X and his daughter with injury to their reputation by having the indecent photographs published ; the intent mentioned was to cause alarm to X and his daughter The real intention as disclosed by the evidence accepted by the trial Magistrate and the High Court, was to force X to pay "hush money '. Section 506 is the penal section which states the punishment for the offence of criminal intimidation ; the offence itself is defined in S 503. It amounts to criminal intimidation.

Note.—Conviction of the appellant u/s 50ı I.P.C was held to be correct.

Ramesh Chandra Vs. The State
A.I.R. 1960 S.C. 154 : 1960 Cri.L J. 177

(xvi) The charge framed u/s 467 of Penal Code for making entries of false or imaginary sale notes in the transport permit. The permits entries may not amount to the falsification of accounts but the entries made therein were false so 477A I P.C. has been contravenced.

G D. Vs. State of Uttar Pradesh
A.I.R. 1960 S.C 400 : 1960 Cri L J. 541

(xvii) Where a Person is convicted u/s 302/149, the true legal position is that in law he must be deemed to have committed the murder as much as the actual murderer has. The section 303 of I.P.C. would apply even in cases where a person undergoing sentence of imprisonment for life is convicted either u/s 302 IPC or read with section 149 or u/s 302 read with 34. The courts below were rights in sentencing the appellant to death u/s 303 I. P. C.

Mahabir Gope Vs. State of Bihar
A I R. 1963 S.C. 118 : 1963 (1) Cri. L.J. 86

(xviii) While courts below acquitted accused 1, 3 and 4 under Section 302, read with Section 34 of the Indian Penal Code, it convicted accused 2 under Section 302, read with Section 34, of the said Code, for having committed the offence jointly with the acquitted persons. That is a legally impossible position

(*Conviction-contd*)

When accused were acquitted either on the ground that the evidence was not acceptable or by giving benefit of dou bt to them, the result in law would be the same ; it would mean, that they did not take part in the offence. The effect of the acquittal of accused 1, 3 and 4 is that they did not conjointly act with accused 2 in committing the murder if they did not act conjointly with accused 2, accused 2 could not have acted conjointly with them.

Krishna Govind Vs. State of Maharashtra.
A.I R. 1963 S.C. 1413 : 1963 (2) Cri L J 361.

(xix) The fact that the prosecution has failed to proved by other evidence the guilt of the accused, does not enti tle the court to say that the accused has succee ded in proving that he did not commit the offence.

Note —The Conviction was Confirmed.

Sajjan Singh Vs. State of Pb.
A I.R. 1964 S.C. 464 : 1964 (1) Cri. L J. 310.

(xx) When four person had been charged with the commission of an offence of murder read with S. 34 and the trial court had acquitted three of them, it was legal to convict the remaining accused of the offence of murder read with S. 34. The court also held that the acquitted person was guilty of the offence, of which he had been tried in the other case, and to find in the later case that the person tried on it was guilty of an offence u/s 34, by virtue of having committed the offence alongwith the acquitted person.

A.I.R 1965 S.C. 1037 : 1965 (2) Cri. L.J. 142.

(xxi) By charging the accused u/s 302 I.P.C. read with 149, the accused appellant cannot be convicted for an offence of murder i.e , 302 for which he (appellant) had not been charged.

A.I.R. 1955 S.C. 274 & A.I.R. 1955 S.C. 419 referred.)

Lakhan Mohto Vs. State of Bihar.
A I.R. 1966 S.C 1742 : 1966 Cri. L J. 1349.

(xxii) If an order of conviction is challenged by the convicted person but the order of acquittal is not challanged by the State then it is only the order of conviction that falls to be considered by the Appellate Court and not the order of acquittal. In exercising the powers conferred by Section 423 (1) (b), the High Court cannot, therefore, convert the order of acquittal into one of conviction and that result can be achieved only by adopting procedure prescribed under section 439 of the Criminal Procedure Code.

It was held that the High Court acted without jurisdiction in altering the finding of acquittal of Lakhan on the charge under Section 302 Indian Penal Code.

Lakhan Mahto Vs. State of Bihar.
A.I.R. 1966 S.C. 1742 1966 Cri. L.J. 1349.

(xxiii) The corresponding provisions of the Madras Act stood repealed, by virtue of

sub-s. (1) of S. 26 By virtue of sub-s. (2), the conviction of the appellant under S. 5 (1) of the Madras Act would be deemed to be conviction under S. 3(1) of the Act, an Act deemed to be in force at the time the conviction took place. It follows that the present Conviction of the appellant will have to be taken as a second conviction, within the meaning of the expressed provision in sub-s (1) of S. 3 of the Act, and the appellant would be liable to suffer enhanced punishment under that sub-section.

Krishnamurthy alias Tailor Vs. Public Prosecutor Madras.
A.I.R. 1967 S C. 567 : 1967 Cri. L J. 544

Copies

(i) Copies of the challan not given. The court ordered that statement of the witnesses and case diary is in the court, counsel may look into that. No complaint made to the trial court about any prejudice having been caused to the accused nor was this point taken before the High Court but in the Supreme Court this objection was raised Held the accused would have raised this objection in the High Court There is no substance in the Supreme Court.

Aftab & Ahmad Khan Vs. State of Hyderabad.
A.I R. 1954 S.C. 436 · 1954 Cri. L J. 1155.

(ii) There can be no doubt that the right which the accused has got of obtaining copies of the statement made by witnesses during investigation is a very valuable right and that the wholesale refusal to grant the same will be a serious irregularity which would vitiate the entire trial as held by the Privy Council in-'Kotayya Vs Empreror', A.I.R. 1947 PC at p. 69 (B).

Purshottam Jethenand Vs. State of Kutch.
A.I.R 1954 S C. 700 . 1954 Cri. L J. 1751.

(iii) The object of section 173 (4) of Criminal Procedure Code is to put the accused on notice of what he has to meet at the time of the inquiry or trial.

Gurbachan Singh Vs. State of Pb.
A.I.R 1957 S.C 623 . 1957 Cri L J. 1009

(iv) Sub-section (4) s. 173 Cr.P.C. read with sub.s (3) of S. 207 A makes ample provision for the defence to be in possession of all the statements and documents before the inquiry begins, but nowhere is it stated either in S. 173 (4) or S. 207 A (3) that the statements in connected cases should also be supplied to the accused).

Gurbachan Singh Vs State of Pb.
A.I R. 1957 S.C. 623 1957 Cri.L J. 1009.

(v) Word 'copy' used in section 419 means certified copy.

State of Uttar Pradesh Vs C. Tobit.
A I.R. 1958 S C. 414 : 1958 Cri. L J. 809.

(*Copies-contd*)

(vi) Non-Compliance with the Provisions of S. 173 Cr.P.c. does not vitiate the procedings and subsequent trial. The word occuring in S. 207 A (3) and S. 173 (4) are not mandatory but directory.

A.I.R. 1957 S.C. 737

(vii) The provisions relating to the record of the statements of the witnesses and the supply of the copies to the accused, so that they may be utilised at the trial for effectively defending accused, cannot normally be permitted to be whittled down, and where the circumstances are such that the court may reasonably infer that prejudice has resulted to the accused from the failure to supply the statement recorded u/s 161 Cr.P.C the court would be justified in directing that the conviction be set aside and in a proper case direct that the defect be rectified and in such manner as the circumstances may warrent.

Noor Khan Vs State of Rajisthan.
A.I R. 1964 S.C. 286 : 1964 (1) Cri. L J. 167.

(viii) Failure to furnish statement of the witnesses recorded in the course of investigation may not vitiate the trial

A.I.R. 1964 S C. 286 . 1964 (1) Cri. L J. 167.

(ix) The charge sheet is hardly a complete or accurate thesis of the prosecution case

R.K. Dalmia Vs The Delhi Administration
A I.R. 1962 S.C. 1821 Para 324 1962 (2) Cri. L.J. 805

Corroboration

(i) A woman who has been raped is not an accomplice but a victim.

Rameshwar Vs State of Rajisthan.
A.I.R. 1952 S.C. 54 : 1652 Cri. L. 547.

(ii) The rule about the advisibility of corroboration should be present in the mind of the Judge. The necessity of corroboration is, as a matter of prudence, except where the circumstances makes it safe to dispense with it.

A I R. 1952 S.C. 54 : 1952 Cri. L.J. 547.

(iii) That as a matter of prudence a conviction should not ordinarily be based on the uncorroborated evidence of a child witness.

A.I R. 1952 S.C. 54 : 1952 Cri. L J. 547.

(iv) The tender years of the child, coupled with other circumstances appearing in the case, such, for example, as its demeanour, unlikely-hood of tutoring and so forth, may render corroboration unnecessary, but that is a question of fact in every case.

A I.R. 1952 S.C 54 : 1952 Cri L J. 547.

(*Corroboration-contd*)

(v) As a matter of prudence and caution it was held not to convict an accused person on oral evidence unless there are some circumstances to lend support to the evidence of the eye witnesses. The corroboration is not of the kind which one requires in the case of an approver or an accomplice but corroboration by some circumstances which would lend assurance to the evidence to before the Judges and satisfy them that particular accused is really concerned in the murder of the deceased.

Lachaman Singh Vs The State.
A.I.R. 1952 S.C. 167 : 1952 Cri. L.J. 863.

(vi) It is a settled rule of evidence that unless a retracted confession is corroborated in material particulars, it is not prudent to base a conviction in a criminal case on its strength alone.

(Note.—The accused was acquitted. Appeal against conviction was allowed).

Puran Vs The State of Pb.
A.I.R. 1953 S.C. 459 : 1953 Cri. L.J. 1925.

(vii) Witness was not willing to the giving of bribe to the accused but only actuated with the motive of traping the accused. The evidence cannot be relied upon without independent corroboration.

Rio Shire Bahandur Singh Vs State of Vindh-P.
A.I.R. 1954 S.C. 322 : 1964 Cri L J. 910.

(viii) Recording of confession in jail is an irregularity but in this case the irregularity did not affect the voluntary character of the confession.

Hem Raj Vs State of Ajmer.
A.I R. 1954 S.C. 462 · 1954 Cri. L J. 1313.

(ix) A confession can be made during trial and the evidence already made may be used to corroborate it It may be made in the committing court, and materials already in the possession of the Police may be used for the purpose of corroboration.

A.I.R. 1954 S.C. 462 : 1954 Cri. L J. 1313.

(x) It is not possible to accept the suggestion that because this report was not as full as it could have been, it should be ignored altogether. It has been rightly used to corroborate the statement of the eye-witnesses.

Abdul Gani Vs State of Madhya Pradesh.
A.I.R. 1954 S.C. 31 : 1954 Cri. L J 323.

(xi) It is not safe to convict an accused person merely on the evidence furnished by a dying declaration without further corroboration becouse such a statement

Corroboration-contd)

is not on oath and is not subject to cross-examination and because the maker of it might be mentally and physically in a state of confusion and might well be drawing upon his imagination while he was making the declration. Suggestion that the deceased might have said some thing by a mistake cannot be entertained.

Note: Conviction though based on dying declaration recorded by a magistrate was set aside.

Ram Nath Vs State of Madhya Pradesh
A.I.R 1953 S.C. 420 : 1953 Cri. L J. 1772

(xii) Mere recovery of Blood stained Dhoti in the absence of other evidence, is no Corroboration or proof of prior concert or that of participation of the accused in the crime.

A.I.R. 1956 S.C. 51 . 1956 Cri.L.J. 147
Prabhu Babaji Navle Vs. State of Bombay

(xiii) Where the two eye-witnesses to the occurrence are interested persons there should be corroboration of their evidence by independent witnesses. This is, of course, a proposition which cannot be of universal application.

Mangal Singh Vs. State of Madhya Bharat
A.I R 1957 S C. 199 : 1957 Cri.L.J. 325

(xiv) The corroboration of an approver's evidence need not be of a kind which proves the offence against the accused. It is sufficient if it connects the accused with the crime. Letters written by the accused to the approver prove close association of the accused and approver. It connect the accused with the crime and approver, so it establishes the case of prosecution both in respect of the offence of conspiracy and the offence of cheating

S. Swaminathnam Vs State of Madras
A I R. 1957 S.C 340 . 1957 Cri.L.J. 422

(xv) The confessions where retracted subsequently the proper approach is to consider each confession as a whole on its merits and use it against the maker thereof provided the court is in a position to come to an unhesitating conclusion that the confession was voluntary and true then it can from the basis of conviction and it shall be corroborated by independent evidence. The rule of practice and prudence requires that the retracted confession should be corroborated by independent evidence. It may not be corroborated with regard to every circumstance nor is it essential that the corroboration must come from facts and circumstances discovered after the confession was made.

1957 S.C 216 : 1951 Cri. L.J. 481

(*Corroboration-contd*)

(xix) An approver is a competent witness but the approver should be reliable witness and it must receive sufficient corroboration.

Note :—Statement of the approver was ignored.

Sawan Singh Vs State of Pb.
A.I R 1957 S C. 637 : 1957 Cri L J. 1014

(xx) Corroboration of the approver evidence should be in material particulars of other independent evidence, the independent evidence may not cover the whole case,

Note —The approvers evidence was not relieen pon.

Sawan Singh Vs State of Pb.
A.I.R. 1957 S.C 637 1957 Cri.L J. 1014

Corroboration-Dying Declration

(xxi) It cannot be laid down as an absolute rule that dying declaration cannot form the sole basis of conviction unless it is corroborated. Each case must be determined on its own facts keeping in view the circumstances in which the dying declaration was made. A dying declaration which has been recorded by the Magistrate in the proper manner, in the form of questions and answer and in the words of maker, stands on much higher footing than a dying declaration which depends upon oral testimony. Where once the court has come to the conclusion that the dying declaration was a truthful version to the death then there is no need of corroboration

Khushal Rao Vs. State of Bombay
A.I.R. 1958 S.C. 22 . 1958 Cri. L.J. 106

Corroboration

(xxii) In the case of a person confessing who has resiled from his statement, general corroboration is sufficient while an accomplice's evidence should be corroborated in mateiral particulars.

Subramania Goundan Vs. State of Madras.
A.I.R. 1958 S.C. 66 .1958 Cri L J. 238

A girl who is a victim of outrageous act is generally speaking, not an accomplice though the rule of prudence requires that the evidence of prosecutrix should be corroborated.

Sidheswar Vs. State West Bengal
A.I R. 1958S C 143 : 1958 Cri L J. 273

(xxiii) The nature of the corroborative evidence should be such as to lend assurance that the evidence of the prosecutrix can be safely acted upon.

Sidheswar Vs. State of West Bengal
A.I R 1958 S C. 143 : 1958 Cri L.J. 273.

(xxiv) The evidence of the accomplice should be corroborated. It is necessary the judge should give some indication in his judgment that he had this rule of caution in mind and should proceed to give reasons for considering it unnecessary to require corroboration.

The State of Bihar Vs. Basawan Singh
A.I.R. 1958 S C. 500 : 1958 Cri. L J. 976

(Corroboration-contd)

(xxv) Degree of corroboration is higher in respect of tainted evidence than i partisan evidence.

A.I R. 1958 S.C 500 . 1958 Cri L J. 9

(xxvi) Independent corroboration does not mean that every detail of the witness the raiding party must be corroborated by independent witnesses.

Note —In this case there was no additional evidence to corroborate the accompli The appeal was allowed),

A.I R. 1958 S. C 500 1958 Cr . L J. 9

(xxvii) Usually and as a matter of caution court requires some material corrobo tion to an extra judicial confessional statement

Note :—Corroboration was found from circumstances. Sentence was upheld.

Ratan Gond Vs. State of Bi

A.I R. 1959 S. C. 18 : 1959 Cri L. J. 1

(xxviii) The corroboration in the full sense implies corroboration not only as to factum of the crime but also as the to the connection of the co-accused w crim.

The amount of credibility to be attached to a retracted confession, howev would depend upon the circumstances of each particular case. Although retracted confession is admissible against a co-accused by virtue of S. 30 the Indian Evidence Act, as a matter of prudence and practice a co would not ordinarily act upon it to convict a co-accused with corroboration.

Note .—Corroboration was found from the recoveries and was sufficient to ma tain the confession.

Ram Parkash Vs State of Pun

A.I R. 1959 S. C. 1 - 1959 Cri. L. J.

(xxix) There should be corroboration in material particulars in the approve evidence. The corroboration in material particulars must be such as connect each of the accused with the offence, evidence which determines mind of the court or a jury that the approvers evidence that the accu committed the crime.

Note :—Circumstantial and indirect evidence was considered sufficient corrob ation.

Jnanendra Nath Vs. State of West Ben

A.I.R. 1959 S.C. 1199 : 1959 Cri.L.J. 1

(xxx) It is not necessary that there should be independent corroboration of ev material circumstances of accomplice witnesses. There must be some ac tional evidence to corroborate. Corroboration need not be from dir evidence. It is sufficient if it is merely circumstantial evidence of the connect of the accused with the crime.

Ramanlal Vs. State of Bom.

A.I.R. 1960 S.C. 961 : 1960 Cri.L J. 1.

(xxxi) Jawanarm, a witness, is neither an accomplice nor any thing analogous to an accomplice, he is an ordinary witness who was undoubtedly presesent at the time the incident took Place. Court may act on the testimony of a single witness, though uncorroborated. Court should not insist on corroboration except in case where the nature of the testimony of the single witness itself requires corroboration as a rule of prudence

Note. -The evidence of a single witness was relied upon and the appeal was dismissed)

Ram Ratan Vs. State of Rajasthun
A.I R. 1962 S.C. 424 : 1962 (1) Cri.L J. 473

(xxxii) The crucial fact on which the charge u/s 467 based is deposed to only by accomplice witnesses and their statements are not corroborated by any other statement on the record. Therefore, the finding of the High Court rested on this evidence uncorroborated by any other evidence is against law, so the conviction is bad in law.

R R. Chari Vs. Sate of Uttar Pradesh.
A I.R 1962 S C. 1573 :1962 (2) Cri.L J. 510.

(xxxiii) The statement of the brother of the approver is no corroboration of the approve. It only means that the approver made a confessional statement to his brother. The evidence of another witness cannot operate as a corroboration of the approvers story because the knife was got prepared by accused No. 1 and the appellant nine weeks before the murder. The findings of the knife at the instance of the first accused also is no corroboration There is no independent corroboration of the participation of the appellant in the offence.

Note ·—Conviction was satiside

Bhima Doula Vs. State of Mashaishtra
A I R. 1963 S C 599 : 1963 (1) Cri L J. 489

(xxxiv) Retracted confession may form the legal basis of a conviction but has been held that the retracted confession must be corroborated.

Note ·—High Court found the Corroboration. S.C being the Question of fact did not entertain it.

Pyare Lal Vs State of Rajasthan
A I.R. 1963 S C 1094 : 1963 (2) Cri.L J. 178

(xxxv) Conviction on the basis of a single witness who resiled from statement in the committing court but in the session court that statement transferred to the file of the session court u/s 288 Cr P C **without corroboration is bad.**

Sharnppa Mutyappa Vs State of Maharashtra
A.I R. 1964 S C 1357 1964 (2) Cri.L.J. 359

Corroboration of a Relation Witness

(xxxvii) It is difficult to accept the plea that if a witness is shown to be a relative of the deceased and it is also shown that he shared the hostility of the victim towards the assailant, his evidence can never be accepted unless it is corrobo-

rated on material particulars. It would not be possible to held that such witnesses are no better than accomplice and their evidence as a matter of law must receive corroboration before it is accepted.

Darya Singh Vs. State of Pb.
A.I R. 1965 S C 328 . 1965 (1) Cri L J 350

Corpus delicti

A conviction for an offence does not necessarily depen upon the corpus delicti being found There may be reliable evidence, direct or circumstantial, of the commission of the murder though the corpus delicti is not traceable.

Ram Chandra Vs State of Uttar Pradesh
A.I R 1957 S.C 381 · 1957 Cri. L J. 559

Corruption Act

(i) Sub-Inspector placed an applicaton before the magistrate seeking the permission for launching prosecution On the application the Magistrate passed the order "Permission given". Neither the application nor the order made there on discloses that any material was placed before the magistrate

Held.

Magistrate only mechanically issued the order on the basis of the application which did not disclose any reason, presumably he thought that only a formal compliance with the Provisions is required. So the Provisions of S. 5 A of the act have not been strictly complied. The trial is therefore vitiated.

State of Madhya Pradesh Vs Mubark Ali
A.I.R. 1959 S.C. 707 . 1959 Cri L.J. 920.

(ii) That Sub. S. (3) of S. 5 of the Prevention of Corruption Act, 1947, does not create a new offence but only lays down a rule of evidence which empowers the Court to presume the guilt of the accused in certain circumstances contrary to the well-known principle of Criminal law that the burden of proof is always on the prosecution and never shifts on to the accused person.
There is only one charge of criminal misconduct of which the appellant has been acquitted ; therefore, there is no other charge which can be founded on the rule of presumption referred to in sub-s. (3).

The offence which is punished under sub-s. (2) or can be founded on the rule of presumption laid down in sub-s. (3) must be the offence of criminal misconduct of one or more of the categories mentioned in cls (a) to (d) of sub-sec. (1).

Surajpal Singh Vs State of Uttar Pradesh.
A.I.R. 1961 S.C 583 . 1961 (1) Cri L.J. 730.

Counsel

Counsel who signs appplications or pleadings containing matter scandalizing the court without reasonably satisfying themselves about the prima facie existence of adequate grounds therefore, with a view to Prevent or delay the course of justice, are themselves guilty of contempt of court and it is no duty of a counsel to his client to take any interest in such application.

M Y. Shareef Vs. Honb'le Judges of Nagpur High Court
A.I.R 1955 S.C. 19 : 1955 Cri.L.J. 133

Court

(i) The sea custom authorities are not a **judicial tribunal** and the adjudging of confisdation, increased rate of duty or penality under the Provisions of Sea Custom Act do not constitute a judgment or order of a court or judicial tribunal necessary for the purpose of supporting a plea of Double jeopardy

Maqbool Hussain Vs. State of Bombay
A.I R. 1953 S.C. 325 : 1953 Cri.L.J. 1432

(ii) Under sub-section (2) of section 197, Cr. P. C. the sanctioning Government may specify a court for the trial of the case but is not bound to do so. When it does not choose to specify the court, the trial is subject to the operation on the other provisions of the Code. But even when it chooses to exerise the power of specifying the court before which the trial is to be held, such specification of the court does not touch the question as to who is the person to function in such court before which the trial is to take place. That is a matter still left to be exercised by the Provincial Government of the area where the trial is to take place.

Further there is no warrant to treat the word "court" in sub section 2 of s 197 Cr. P. C. as being the same as a person in sub section (1) of s. 14 of Criminal P. Code

M.K. Gopalan Vs. State of M P.
A.I.R 1954 S C 362 : 1954 Cri L.J. 1012

(iii) The Word 'court' is not defined in the contempt of Courts Act and the expression' courts subordinate to the High Courts in section 3(1) of the Contempt of the Courts Act would 'prima facie' mean the court of law subordinate to the High Courts in the hierarchy of the courts.

Brajnandan Sinha Vs. Jyoti Narain
A.I.R 1956 S C. 66 : 1956 Cri.L.J. 156

(iv) Section 3, Evidence Act (1 of 1872) defines "Court" including all judges and Magistrates, and all persons, except arbitrators, legally authorised to take evidence. This definition, however, has been held to be not exhaustive but framed only for the purpose of Evidence Act and is not to be extended where such an extention is not warranted.

A Commissioner appointed under the Public Servants (Inquiries) Act (37 of 1850 is not a court within the meaning of the Contempt of Courts Act, 1952

A.I.R. 1956 S C. 66 : 1956 Cri.L J 156

(v) Returning officer deciding on validity of nomination paper under section 36 (2) Representation of People Act is not a court for the purpose of section 195 (1) (b) of the Cr. P. C. and the result is that even as regards the charge under section 193 I.P.C. the order of Returning Officer is not appealable, as the offence is not committed in or in relation to any proceeding in court.

Virinder Kumar Vs. State of Pb.
A I.R. 1956 S.C 153 1956 . Cri.L J. 326

(vi) Court of subordinate judge is not subordinate to Senior Sub-Judge but to District Judge for purposes of section 195 (3) of Cr P. C.

Kuldip Singh Vs State of Pb.
A.I R. 1956 S.C. 391 : 1956 Cri.L J. 781

(vii) In Punjab, Court of Senior Subordinate Judge is not same court as court of Subordinate judge First Class

A.I R. 1956 S.C. 391 : 1956 Cri.L J. 781

(viii) Magistrate acting u/s 234 of Ajmer Mewar Municipal Act is not an inferior Criminal Court to High Court and as such his orders are not subject to the revisional jurisdiction of the High Court.

The Dargah Committee Ajmer Vs. The State of Rajasthan

A.I.R. 1962 S C 574 : 1962 (1) Cri.L.J 507

(ix) A Sales Tax Officer is not a Court within the meaning of S. 195 of the Criminal Procedure Code and therefore it was not necessary for a Sales Tax Officer to make a complaint u/s 195 Cr. P C. and the proceedings without such a complaint are not without jurisdiction.

Jagannath Vs. State of Uttar Pradesh
A I R 1963 S.C. 416 : 1963 Cri.L.J. 330

(x) In so far as certain offences falling under sections 193 to 195 and 471 I P.C. are concerned The court before which that person has appeared as a witness and has disposed of the case can alone make a complaint.

Shabir Hussain Vs. State of Maharashtra
A I.R. 1963 S.C. 816 : 1963 Cri.L.J. 803

(xi) The fact that the enquiry does not relate to an offence is not decisive of the question whether the Magistrate is functioning as a court. There are many proceeding under the Code of Criminal Procedure, such as those under Ss. 133, 144, 145 and 488, which do not deal with offences but still it is never suggested that a Magistrate in making an enquiry in respect of matters thereunder is not functioning as a court. If the Magistrate is acting as a court it is obvious that he is subject to the revisional jurisdiction conferred under Ss. 435 and 439 of the Code of Criminal Procedure.

The State of Uttar Pradesh Vs. Kaushailya etc
A I R 1964 S.C 416 : 1964 (1) Cri L J. 304

Court Duty,

It is not part of a court's duty to enter upon a roving inquiry in the middle of trial on matters which are collateral to the main issue.

Bhagwan Singh Vs State of Pb
A I R. 1952 S.C. 214 : 1952 Cri L J. 1131

Counter Feit.

There can be counter feiting even though the imitation is not exact for the purpose of Penal Code. Explanation 2 of section 28 lays down a rebuttal presumption where the resemblance is such that a person might be deceived thereby in such a case the intention to deceive or knowledge of likely hood of deception would be presumed.

The State of Uttar Pradesh Vs Hafiz Mohd Ismail
A.I R. 1960 S.C. 669 : 1960 Cri L.J. 1017

Court witness

It is wrong to say that in every murder case. the court must scrutinise the police diary and made a list of witnesses whom the prosecution must examine is virtually to suggest that the court should itself take the role of prosecutor.

Darya Singh Vs State of Pb7
A I.R. 1965 S,C. 328 : 1965 (1) Cri.L J 350

Credibility.

(1) It is true that three out of those four witnesses are closely related to the deceased Inder Singh.

But that, it has again been repeatedly held, is no ground for not acting upon that testimony if it is otherwise reliable in the sense that the witnesses were competent witnesses who could be expected to be near about the place of occurrence and could have seen what happened that afternoon.

Garcharan Singh State of Pb.
A.I.R. 1956 S C. 460 : 1956 Cri.L J. 827

(ii) As to whether the witnesses should or should not be beleived is prima facie a matter for the Courts of fact to determine.

Khachew Singh Vs. State of Uttar Pradesh
A.I.R. 1956 S C. 546 : 1956 Cri.L.J. 950

(iii) Appellant ordered to B an other accused, a member of an unlawful assembly to set fire to the hut. The setting of the fire by B, was not proved but there is evidence that offence abetted is committed in consequence of the abetment Conviction u/s 436 read with 109 Indian Penal Code of the accused charged of abetting the offence is not illegal, although person charged of committing the offence abetted is acquitted. There is nothing wrong in law in not accepting the evidence of witness part and accepting the other part.

Gallu Shah Vs. State of Bihar
A.I.R. 1958 S.C. 813 . 1958 Cri L.J. 1352

Criminal Court

Magistrate acting u/s 234 of Ajmer Mewar Municipality Act is not an inferior criminal court to High Court and as such his orders are not subjects to the revisional jurisdiction of the High Court.

The Dargah committee Ajmer Vs. State of Rajasthan
A.I.R. 1962 S.C. 574 : 1962 (1) Cri.L.J. 507

Crimical Breach of Trust

(1) Sub section 2 of section 222 Cr.P.C. is an exception to meet certain contingency and is not the normal rule with respect to framing of a charge in cases of criminal breach of trust. It is only when it may not be possible to specify exactly particular item with respect to which criminal breach of trust has taken place or the exact date on which the individual items were misappropriated or in some similar contingncy that the court is authorised to lump up the various items and to mention the total amount misappropriated within a year in the charge.

Ranchhod Lal Vs. State of Madhya Pradesh
A I.R. 1965 S C. 1248 : 1965 (2) Cri L.J. 253

(ii) Mere existence of accused person's dominion over Property (under question) is not enough. It must be shown that the dominion was the result of entrustment.

Velji Raghavji Patel Vs. State of Maharashtra
A.I.R. 1965 S.C. 1433 : 1965 (2) Cri.L.J. 431

Criminal Justice

The public interst demands that criminal justice should be swift and sure that

the guilty should be punished while events are still fresh in the public mind and that the innocent should be absolved as early as, is consistent with a fair and impartial trial

M:S. Sherif Vs. State of Madras
1954 S.C. 397 : 1954 Cri. L.J. 1019

Criminal Matter

(i) As between the civil and the criminal proceedings the criminal matters should be given precedence

(ii) Each accused is entiled in law to test the evidence given against him by a prosecution witness by cross-examination and such cross examination may not be limited only to what has been stated by him in examination-in-chief An accused is entiled in law to put further questions to a prosecution witness by way of cross-examination in respect of which he had already stated in reply to questions put to him in cross examination by the other co-accused.

C.T. Muniaphan Vs The State of Madras
A.I R. 1961 S C. 175 : 1961 (1) Cri. L.J. 315

Curable

(i) If there is a convintion for a charge not framed it is an illegality and not irregularity curable by the provisions of section 535 and 537 Cr.P.C.

A.I.R. 1956 S.C. 274 :

(ii) If the charge does not specifically mention the name of the approver as having been one of the conspirators sec 225 Cr.P.C. will cure the defect if the accused is not misled or the charge has not occasioned the failure of justice.

Binbadhar Pradhan Vs State af Orissa
A.I.R. 1956 S.C 469 : 1956 Cri. L.J. 831

(iii) *See charge, irregularity, and common intention also for curablity.*

Curd

Where Dahi or curd, other than skimmed milk dahi is sold or offered for sale without any indication as to whether it is derived from cow or buffalo milk, the standards prescribed for dahi prepared from buffalo milk shall apply.

M.V. Krishan Nambissan Vs State of Kerala
A.I R. 1966 S.C. 1676 (Page 1678) 1966 Cri. L.J. 1347

Custody

(i) When the lawfulness or otherwise of the custody of the persons concerned is

in question, the remand papers, if genuine, would be of vital importance.

Note Documents not produced, their Lordsnips took view against the state.

Ram Narayan Singh Vs The State of Delhi
A.I.R. 1953 S. C. 277 : 1953 Cri. L.J. 1113

(ii) In the absence of a clear rule defining responsiblity and the nature of the custody of money in such circumstances, accused can not be held to have been entrusted with the custody of the money.

Bhagat Ram Vs State of Punjab
A.I.R. 1954 S.C. 621 . 1954 Cri. L.J. 1645

(iii) That in issuing the writ of Habeas Corpus the court has the power in the case of infants to direct its custody to be placed with a certain person.

Gohar Begum Vs Suggi alias Nayma Begum
A.I.R. 1960 S.C. 93 : 1960 Cri. L.J. 164

Custom Officer.

(i) The Custom Officer when acts under the Sea Custom Act to prevent the smuggling of goods by imposing confiscation and penalities act judicially. An enquiry under S. 171-A of the Sea Custom Act, 1878, as amended in 1955 is deemed to be judicial Proceeding within the meaning of Ss. 193 and 228 I.P.C.

The State of Pb. Vs. Barhat Ram.
A.I.R. 1962 S.C. 276 : 1962 (I) Cri.L.J. 217.

(ii) Custom Officers are not Police officers for the purpose of S. 25 of the Evidence Act.

A.I.R. 1962 S.C. 276 : 1962 (I) Cri.L.J. 217.

(iii) Section 172 of the Sea Customs Act by its second paragraphs brings into operation the provisions of the Criminal Procedure Code, and therefore, the Magistrate's jurisdiction is both under S. 172 of the Sea Customs Act and the Criminal Procedure Code. There can be no doubt also that unlike S. 96, the Magistrate is to be guided by the belief of the Customs authorities, though he may prevent undue harassment in cases, where it can be seen that the belief is not entertained by the Customs Officer or his action is mala fide, the Magistrate is certainly entitled to satisfy himself about the belief of the Customs Officer, but is not required to make up his own mind independently of the belief. To this extent only is the matter in the control of the Magistrate, before he issues the warrants. After the warrant is issued, it is an order of the Magistrate enabling the Customs authorities to take action, for without warrant, they cannot enter any house or premises.

Mohammad Serajuddin Vs R.C. Misra
A.I.R. 1962 S.C. 759 : 1962 (I) Cri. L.J. 770

Custom Officer-contd)

(iv) Magistrate's order that the 959 documents which were seized by the Custom authorities should remain in his custody and should be scrutinitsed in his court, is correct and custom authorities are not entitled to have its custody.

Mohammad Serajuddin Vs R C. Misra
A.I.R 1962 S C. 759 . 1962 (1) Cri. L.J. 770

(v) A sub inspector of Police being an officer in the District of Barmer which is mentioned in the schedule, was an officer for the entire area which formed the jurisdiction of the collector of Land Customs, Delhi, including the place where the seizure was made, was therefore competent to make the seizure.

Hukma Vs State of Rajasthan
A.I R. 1965 S C. 476 : 1965 (1) Cri L.J 369

"D"

Dacoity

(i) An attempt to commit robbery by the appellant and his companion was made though, in fact, no robbery was committed by reason of the hue and cry raised by M & G. The dacoits took to their heels without collecting any booty

The offence of dacoity was completed the moment they took heels. The dacoits are to be punished u/s 395 Indian Penal Code.

Shyam Behari Vs State of Uttar Pradesh
A.I.R. 1957 S C. 320 : 1957 Cri. L.J 416

(ii) The transaction of dacoity had ended the moment the dacoits took to their heels, and another and a separate transaction took place when the appellant shot at Mendai a chaser while crossing the ditch of the Bipra Farm. So the accused committed a separate offence u/s 302 I.P.C. also.

A.I R. 1957 S.C. 320 : 1957 Cri. L J 416

Damage

The accused falsely represented that he held the degree of M B.B.S. of certain University as necessary qualification required for the post. The Public Service Commission interviewed him and selected him for the post He was appointed by the Government and drew pay for many years when the fraud was detected.

The conviction for the offence of cheating u/s 419 I P.C. was correct as the accused dishonestly induced the Government to deliver property to him and thus committed offence of cheating under the first part of section 415 I.P.C.

Kanumukkala Krishnamurthy Vs State of Andra Pradesh
A.I R. 1965 S.C. 333 : 1965 (1) Cri. L.J. 355

Dahi (curd)

Where Dahi or curd, other than Skimmed milk dahi is sold or offered for sale without any indication as to whether it is derived from cow or buffalo milk, the standards prescribed for dahi prepared from buffa o milk shall apply.

M.V. Krishnan Nambissan Vs State of Kerala
A.I R. 1966 S.C. 1676 (1678) S C. : 1966 Cri L J. 1347

Dark Night

When the witnesses were suddenly roused from their sleep in the early part of the dark night without any previous apprehension, it would be difficult for them to notice what they claimed to have clearly observed.

(**Note** ;—Witnesses evidence was doubted So the appeal was allowed. One of the witnesses was also having dim eye sight.)

Mohinder Singh Vs State of Punjab
A.I.R. 1955 S.C. 762 : 1955 Cri. L.J. 1541

Date

In Habeas Corpus proceedings, the court is to have regard to the legality or other wise of the detention at the time the return and not with reference to the institution of the proceedings.

Ram Narayan Singh Vs The State of Delhi and others
A.I.R. 1953 S.C. 277 : 1953 Cri. L.J. 1113

Dealing.

Where a person does any over act in relation to prohibited goods which he knows to be such and the act is done in consequence of a previous arrangement or agreement it would be a case where the person doing the act is concerned in dealing with the prohibited goods.

Both the words "concerned" and "deal" have a wide cannotation. The words "concerned in" mean "interested in, involved in, mixed up with" while the words "deal with" mean "to have something to do with, to concern one-self, to treat, to make arrangement, to negotiate with respect to something" Therefore, when a person enters into some kind of transaction or attempt to enter into some kind of transsaction with respect to prohibited goods and it is clear that the act is done with some kind of prior arrangement or agreement, it must be held that such a person is concerned in dealing with prohibited goods. The fact that the act stopped at an attempt to purchase smuggled goods before the deal could be completed when the police intervened does not in any way mean that Person was not concerned in dealing with the smuggled gold.

Sachidananda Banerjee Asst. Collector of customs Calcutta Vs Sitaram Agarwala and another
A.I.R. 1966 S.C. 955 .1966 Cri.L.J. 712

Death

Section 431 of Cr P.C. provides that every appeal against acquittal and every other appeal under Chapter XXXI except an appeal from sentence of fine shall finally abate on the death of the appellant. The High Court or the court of Session cannot pass any order in favour of the dead person except in an appeal from a sentence of fine.

State of Kerala Vs Narayani Amma Kamala Devi
A.I.R. 1962 S.C. 1530

(*Death-contd*)

(ii) Tha High Court was right in holding that the application for revision could be entertained u/s 439 of the Code of Criminal Procedure even after the death of the accused person.

A.I R 1962 S.C. 1530

(iii) There is nothing in the criminal Procedure Code which warrants the substitution of one complainant for another. But in this case the word "substitution" amounts to allowing the mother to act as the complainant in order to continue the prosecution. This power is possessed by the Magistrate because of S. 495 of of the Cr.P C. by which courts are empowered (with some exceptions) to authorise the conduct of prosecution by any person.

So the death of the complainant in serious case like u/s 493 and 496 I.P.C. does not put an and to the Prosecution. Mother of the complainant can be placed as complainant.

Ashvin Nanubhai Byas Vs The State of Maharashtra
A.I.R 1967 S.C. 983 : 1967 Cri.L-J 943

Decide.

The use of the word "Decide" in R-30 A (8) of the defence of India Rules does not compel a judicial approach. The mere fact that an executive authority has to decide something does not make the decision judicial.

A.I.R. 1965 S.C. 596 : 1965 (1) Cri L J. 501

Decision

(i) It is the duty of the court to give a summary of the evidence of the material witnesses and to appraise the evidence with a view to arrive at the conclusion whether the testimony of the witness should be believed

Aftab Ahmad Khan Vs State of Hyderabad
A.I R. 1954 S C. 436 · 1954 Cri. L.J.1155

The decisions of English Courts being merely of pursuasive authority, decision, of such a court even if at variance with one of the Supreme Court, do not by themselves justify an application to reconsider an earlier decision of the Supreme Court.

Mani Pur Administration Mnipur Vs Thokchom Bira Singh
A.I.R. 1965 S.C. 87 : 1965 (1) Cri L J. 120

(ii) The condition precedent to the exercise of jurisdition to detain under R.30 (1) (b) is only the subjective satisfaction that it is necessary to detain the person concerned. (of. Ramanohar Lohia Versus State of Bihar 1966-1 SCR 709 (AIR 1966 SC 740).

(*Decision-contd*)

The difference in the words used in Rule 30 (I) (b) and Rule 30-A viz., satisfaction in one case and decision after taking into account all the circumstances of the case in the other cannot be accidental but must be deliberate and purposeful. The phraseology used in Rule 30-A is not "in its opinion" or "is satisfied" or "has reason to believe" etc., as often used in modern statutes and rules.

What precisely does the word "decide" in Rule 30-A mean ? It is no doubt a popular and not a technical word. According to its dictionary meaning "to decide" means "settle (question, issue, dispute) by giving victory to one side ; give judgment (between, for, in favaur of, against) ; bring, come to a resolution" and "decision" means, settlement, (of question etc.), conclusion, formal judgment, making up ones mind, resolve, resoluteness, decided character "

P.L. Lakhanpal Vs Union of India
A I R 1967 S C. 908

Declaration

Article 352 of the Constitution does not require the President's satisfaction to be stated in the declaration The declaration should show that the President is satisfied about the existence of emergency.

P.L. Lakhanpal Vs Union of India
A.I.R. 1967 S.C. 243 (245) ; 1967 Cri. L.J. 282

Defamation

(i) There is no absolute privilege in favour of the member of the Legislature in respect of a publication of a question at the instance of the member who had sought to put it in the house, but was disallowed by speaker, when that question contains defamatory imputation regarding the character of a person. Such a publication is not excepted by any of the exception contained in Section 499 of I.P.C. from the law of defamation.

Dr. Jatish Chandra Chosh Vs Hari Sadhan Mukherjee
A.I R 1961 S C. 613 . 1961 (1) Cri. L J. 743

(ii) There are two restrictions placed upon the power of the Public Prosecutor to lodge a complaint with respect to defamation of a high dignitary such as the Governor. The first is that he must have been given a sanction to lodge such complaint and the other is that the sanction should be accorded by a Secretary to the Government authorised by the Governor in this behalf

The Governor cannot leave to any other person or the authority like govt. to decide whether a complaint should be lodged or not.

(Defamation-contd)

Note :—A complaint u/ss 500 and 501 I.P.C. could not be lodged by the Public Prosecutor.

Gour Chandra Rout Vs The Public Prosecutor Cuttack.
A.I.R. 1963 S.C. 1198 : 1963 (2) Cri. L.J. 194

(iii) Person includes collection of Persons. So Prosecution Staff U.P. Government can be subject to defamation and explanation 2 of S. 499 I P.C covers such cases.

Sahib Singh Vs State of Uttar Pradesh
A I.R. 1965 S.C. 1451 : 1965 (2) Cri. L.J 434

Defect

Even if there was any defect in the examination of the accused u/s 342 Cr. P C. the defect amounts merely to an irregularity

C.T. Muniappan Vs The State of Madras
A.I.R 1961 S.C. 175 : 1961 (1) Cri. L J. 315

Defective

When the certificate granted by the High Court for leave to appeal to Supreme Court is defective, Supreme Court can grant special leave.

Pershadi Vs State of Uttar Pardesh
A.I R 1957 S.C 211 . 1957 Cri. L.J. 328

Defence

(i) The magistrate did not afford the appellant an apportunity of being represented by the counsel though he is given that right by S. 340 (1) Criminal Procedure Code. On the facts of the case it has been held that the right conferred by section 340 (1) of Cr.P C. does not extend to a right in an accused person to be provided with a lawyer by the state or by the police or by the Magistrate. That is a privilege given to him and it is his duty to ask for a lawyer if he wants to engage one himself or let his relation to engage one for him. The only duty cast on the magistrate is to afford him the necessary opportunity.

Tara Singh Vs The State
A.I R. 1951 S.C. 441 : 52 Cri.L.J. 1491

(ii) The right of private defence does not arise if there is time to have recourse to the protection of the public authorities. It also does not extend to the infliction of more harm than is necessary for the purpose of defence. The man claiming right of private defence must be under reasonable apprehension of death or grievious hurt to himself or to those whom he is protecting,

(*Defence-contd*)

and in the case of the property, the danger to it must be of the kinds specified in Sec. 103 I.P.C.

Note :—The accused was acquitted on the plea of right of private defence.

Anjad Khan Vs The State
A.I.R. 1952 S.C. 165 : 1952 Criminal L J. 848

(iii) The very fact that the defence was given out at such an early stage and that it has, to such an extent, been corroborated, is a strong reason for thinking that the defence was very likely to have been true.

Bhagat Ram Vs State of Punjab
A.I.R. 1954 S.C. 621 : 1954 Cri L.J. 1645

(iv) Immediately not putting up the defence of the accused is not fatal as the different persons react differently in the similar circumstances.

Zwinglee Ariel Vs State of Madhya Pradesh
A.I.R 1954 S.C. 15 : 1954 Cri.L.J. 230

(v) A suggestion of plantation of drums of rectified spirit and other prohibited articles by the police is of little value when it was not said that the godown from where those articles were recovered was accessible to several other persons and police might have kept that spirit there, and when the appellant was in possession of the godown and a servant working under the appellant was inside the godown. The Magistrate was justified in drawing the inference that these articles were in possession of the appellant.

Vijendrajit Ayodhya Prasad Goel Vs State of Bombay
A.I.R. 1953 S.C. 247 : 1953 Cri.L.J. 1097

(vi) The denial of the right of producing defence u/s 208 of the Criminal Procedure Code in itself is sufficient to cause prejudice to the accused and failure of justice in as mnch as the accused were prevented from leading evidence which might have induced the magistrate not to frame a charge against them or cancel it. There is no question of the application of S. 537 Cr.P.C, in such circumstances. The commitment held bad in law and must be quashed on this ground alone.

Chhadamilal Jain Vs State of Uttar Pradesh
A I.R. 1960 S.C. 41 : 1960 Cri.L.J. 145

(vii) The accused is to establish the benefit of section 132 Cr.P.C. in the same manner as an accused has to establish any other exception he pleads in defence of his conduct in a criminal case.

Nagraj Vs State of Mysore
A.I.R. 1964 S.C. 269 : 1964 (1) Cri L.J. 161

(*Defence-contd*)

(viii) When the statute says that it will be his duty to keep the guard in position when the machine is working and when it appears that he has not done so, it will be for him to establish that notwithstanding this he was not liable. The mere fact that some one else had removed the fencing and without the knowledge, consent or connivance of the occupier or manager, does, not always provide a defence since the onus is on the accused to prove the defence.

Note :—It was held that a accused did not discharge the onus so is liable u/s 92 of the Factories Act (1948) for having failed to carry out the terms of S. 21 (1) (iv) (o) of the Act.

The State of Gujarat Vs Jethalal Ghelabliai Patel
A.I.R. 1964 S.C. 779 : 1964 (1) Cri L.J. 558

(ix) Absence of knowledge of notification is not a valid defence. Publication in Gazettee of India is effective to give notice of it to persons concerned.

State of Maharashtra Vs Mayer Hans George
A.I.R. 1965 S.C. 722 : 1965 (1) Cri. L.J. 641

(x) It is true that in ascertaining whether a group of persons had common intention to murder, the evidence adduced by the defence that they had common intention only to cause hurt is relevant.

Gurdatta Mal Vs State of Uttar Pradesh
A.I.R. 1965 S.C. 257 : 1965 (1) Cri. L.J. 242

(xi) The fact that the appellant called for several documents and gave a list of witnesses as soon as he entered on his defence, shows what he knew at the relevant time, and his plea that he acted in good faith has to be judged on the basis that he made the imputations because he had material of this kind in his possession.

Note : Appellant got the benefit of exception nine to S. 499 IPC and was acquitted

Harbhajan Singh Vs State of Punjab
A.I R. 1966 S.C. 97 (Page 107) : 1966 Cri. L.J. 82

Defence Evidence

A conviction, arrived at without offording opportunity to the defence to lead whatever relevant evidence it wanted to produce cannot be sustained.

Note : *See Defence also.*

Habeeb Mohammad Vs State of Hyderabad
A.I.R. 1954 S.C. 51 : 1954 Cri. L.J. 338

Defence of India Act

(i) When a statute is repealed or comes to an automatic end by efflux of time,

(Defence of India Act-contd)

no prosecution for acts done during the continuance of the repealed or expired Act can be commenced after the date of its repeal or expiry because that would amount to the enforcement of a repealed or dead Act. In case of repeal of statutes this rule stands modified by section 6 of the General Clauses Act. An expiring Act however is not governed by the rule enunciated in that section.

The State of Uttar Pradesh Vs Seth Jagamander Dass
A.I.R. 1954 S.C. 683 : 1954 Cri. L.J. 1736

(ii) "No restrictions other than those prescribed under sub-rule (4) of Rule 30 can be imposed on a detenu. If the appropriate authority seeks to impose on a detenu a restriction not so prescribed, the said authority will be interfering with the personal liberty of the detenu in derogation of the law where under he is detained. If that happens, the High Court, in terms of Article 226 of the Constitution, can issue an appropriate writ or direction to the authority concerned to act in accordance with law."

The State of Maharashtra Vs Prabhaker Pandnrang Sanygiri
A.I.R. 1966 S.C. 424 : 1966 Cri. L J 311

(iii) There is no difficulty if two ministers successively being satisfied that it is necessary to detain a person for different reasons and then their order is carried out by one order of detention duly authenticated.

Godovari S. Parulekar Vs The State of Maharashtra
A.I.R. 1966 S.C. 1404 : 1966 Cri L.J. 1067

(iv) The High Court has jurisdiction to grant interim relief by way of bail to a detenu who has been detained under Rule 30 of the Rules under the Defence of India Act.

State of Bihar Vs Ram Baulak Singh "Balak"
A.I.R. 1966 S.C. 1441 : 1966 Cri. L.J. 1076

(v) Rule 30 (1) (b) of the Defence of India Act cannot be said to be ultravires the section 3 (2) (15) (i) of the Defence of India Act for the reason that it does not state that the satisfaction of the authority making the order of detention has to be on grounds appearing to it to be reasonable.

The rule requires only that the detaining authority must be satisfied that the detention is necessary for the purposes mentioned and that is what the latter part of section under which it was made also says. The Rule has clearly been made in terms of the section authorising it.

P L. Lakhanpnl Petitioner Vs union of India
A.I.R. 1967 S.C. 243 (February Part) : 1967 Cri. L.J. 282

(Defence of India Act-contd)

(vi) The Satisfaction of the Government which justifise the order of detention under R. 30 is a subjective satisfaction. A court cannot normally enquire whether grounds existed which would have created that satisfaction on which alone the order could have been made in the mind of a reasonable person. If, therefore, an authenticated order of detantion is on its face regular and in conformity with the languge of R. 30, it is not ordinarily open to a court to enter into an investigation about the sufficiency of the material on which the order of detention is based.

Jaichand Lal Sethia Vs The State of West Bengal
A.I R. 1967 S C. 483 : 1967 Cri. L.J 520

(vii) During the pendency of the Presidential Order the validity of the Ordinance or any rule or order made thereunder, cannot be questioned on the ground that it contravenes Arts 14, 21 and 22. But this limitation cannot preclude a citizen from challenging the validity of the ordinance or any rule or order made thereunder, on any ground other than the contravention of Arts 14,21 22, the Presidential Order cannot come into operation. It is not also open to the appellant to challange the Order on the ground of contravention of Art. 19, because as soon as a Proclamation of Emergency is issued by the President under Art. 358, the provisions of Art. 19 are automatically suspended. But the appellant can challenge the validity of the order **on a ground other than those covered by Art. 358, or the Presidential Order issued under Art. 359 (1). Such a challenge is outside** the purview of the Presidential Order.

Jai Chand Lal Sethi
Versus
State of West Bengal and others
A.I R. 1967 S.C. 483 (April Part) : 1967 Cri. L.J. 520

Defence of India Rules

(i) The satisfaction of the authority which justified the use of the power under Rule 30, and confirmation of the order of detention are not subject to judicial review, for the order of detention without trial is pre-eminently an executive act. The subjective detention of the detaining authority is a condition of the making of the order, and if that condition is shown to exist, the Courts have no power to enquire into the sufficiency of material on which the order is made or the propriety or expediency of making the order. It is the satisfaction of prescribed authority which is determinative of the validity. That however, does not exclude the Courts power to investigate into the compliance with the procedural safeguards imposed by the statute, or into the existence of prescribed conditions precedent to the exercise of power, or into a plea

that the order was made malafide, or for a collateral purpose. That, however, is not judicial review of the order.

Sadhu Singh Vs Delhi Administration
A.I.R. 1966 S.C. 91 (Page 94)

Defence of India Rules-Judicial

(ii) That the function entrusted to the authority under R. 30-A (a) of Defence of India Rules as distinguished from the power under R. 30 (1) (b) is quasi judicial and the decision which it has to arrive at cannot be anything other than a quasi judicial decision.

P.L. Lakhanpal Vs The Union of India
A.I.R. 1967 S.C. 1507 : 1967 Cri..L.J. 1390

Defence of India Rules (1962)

(iii) Under the scheme of the Defence of India Rules, if, without any additional grounds coming into existence, the State Government considered it necessary that the detention of the petitioner should be continued, the proper course open to the State Government was to make an order of continuation under R. 30-A (9), after reviewing the original order within the period perscribed in that rule. The State Government failed to review the order in that manner and the detention consequently became illegal on the expiry of six months from 11th March 1966. On the 12th May 1967, a fresh order of detention on identical grounds, on which the earlier order, dated 11th March 1965 had been made, could not be passed justifiably because that earlier order, dated 11th March 1966 was a valid order and had already taken full effect. A fresh order could have been made only if additional grounds had come into existence, though after taking into consideration the earlier grounds also which were the basis of the original order of detention. If there were no fresh or additional grounds which came into existence after 11th March 1966, the making of another fresh order under Rule 30 (1) (b) would really amount to a subterfuge adopted for the purpose of getting round the provisions of R 30-A. (9) under which an order of continuation of detention had to be made and that order had to be a quasi judicial order and not merely an executive order. By purporting to act under R-30 (1) (b) and passing a fresh order under it, the State Government obviously deprived the petitioner of the right of tendering an explanation or supplying materials to show that there was no justification for continuing his detention.

Note:—Petition was allowed.

Avtar Singh etc. Vs State of Jammu and Kashmir
A.I R. 1967 S.C. 1797 : 1967 Cri L.J. 1705

Defraud

(i) The expression "Defraud" involves two elements namely, deceit and injury to the person deceived. Injury is some thing other than economic loss that is deprivation of property, whether movable or immovable or of money and it will include any harm whatever caused to any person in body, mind, reputation or such others.

Where there is a benefit or advantage to the deceiver, but no corresponding loss to the deceived the second condition is satisfied.

(**Note** :—Where there was no benefit to the appellant and no loss to the insurance company. Held the appellant was not guilty u/s 467, 468 I.P.C.)

Dr. Vimla Vs The Delhi Administration

A.I R. 1963 S.C. 1572 : 1963 (2) Cri. L.J. 434

(ii) The word "Fraudulently" is defined by Section 25 of the Penal Code. A person is said to do a thing fraudulently if he does that thing with intent to defraud but not otherwise. The last three words "but not otherwise" clearly indicate that the intent must be an "intent to defraud." This expression has given a great deal of trouble.

It is sufficient to say that the words "with intent to defraud" in the section indicate a bare intent to deceive but an intent to cause a person to act, as a result of deception played upon him, to his disadvantage. This is the most extensive meaning that may be given to the expression "with intent to defraud" in our Penal Code and the words "but not otherwise" clearly show that the words "intent to defraud" are not synonymous with the words "intent to deceive" and require some action resulting in some disadvantage which, but for the deception, the person deceived would have avoided.

The accused an handwriting expert produced forged documents such as his diploma in the court.

Held :—Accused Dr. Dutt did not intend to cause wrongful gain to one person or wrongful loss to another person when he brought the diploma into the Court. He may have intended to deceive the Court. So he did not act dishonestly and he did not intend to cause loss to any body as he did not produce the diploma voluntarily. His conduct was, of course, corrupt but that does not come within the purview of S. 471 I.P.C, case falls us 196 I.P.C. which the prosecution has dropped. So the conviction U/s 467, 471 cannot be allowed to stand.

Dr. S. Dutt. Vs The State of U P.

A I.R. 1966 S.C. 523 (Page 528) : 1966 Cri. L.J. 459

Delay

(i) It is said that although there was a definite allegation of the alleged offer of bribe made by the appellants to the two police officers on 24/25.1.1949 and

(*Delay-contd*)

although the two police officers informed their superior officers and the latter advised the trapping of the appellants but nothing was done for two months.

Held :—There is no force in this contention because the police authorities had per force to wait until the appellants made a further move in the matter. It is not reasonable to suggest that the police authorities should go out of their way and actively invite bribes in order to trap the appellant.

Mahadev Dhanappa Gunatai Vs State of Bombay
A I.R. 1953 S C. 179 : 1959 Cri. L.J. 902

(ii) The first information report was lodged within 6-1/2 hours of the occurance at a place 12 miles from the police station. The victim did not die at once. Distance was covered partly by lorry and partly on foot.

Held :—It was natural for the complainant (wife) first to tend to the victims who were her husband and brother. The report made within 6-1/2 hours in these circumstances is prompt.

Dalip Singh Vs The State of Punjab
A.I.R. 1953 S.C. 364 : 1953 Cri. L J. 1465

(iii) There was inordinate delay in sending the sealed parcels of (a) the empty cartridge case recovered from the scene of occurrence, and (b) the rifle recovered from the house of the appellant, for the opinion of the ballistic expert. This inordinate delay raises much suspicion and has given rise to the suggestion on the part of the accused made in the course of the cross-examination of the Sub-Inspector that the empty cartridge case ultimately sent to the expert relates to a cartridge that was fired by them at the Police Station and is not the one recovered at the spot.

Note :—Appeal was accepted.

Santa Singh Vs State of Panjab
A.I.R. 1956 S C. 526 : 1956 Cri. L J. 930

(iv) The delay not in the presentation of an appeal but only in following the procedural steps for making the case ready for disposal and was not due to the negligence of the appellant, delay was excused.

The State of U P. Vs Col Sujan Singh
A.I.R. 1964 S.C. 1897: 1965 (1) Cri. L.J. 94 (Jan.Pt.)

Delegation

(i) Article 358 of the Constitution makes it clear that things done or omitted to be done during the emergency cannot be challenged even after the emergency is over. Section 3 (2) (15) (i) and Sec. 40 of the Defence of India Act cannot be challenged on the ground of excessive delegation.

Makhan Singh Vs The State of Panjab
A.I R. 1964 S.C. 381 (386) 1964 (1) Cri. L.J. 269

(Delegation-contd)

(ii) Section 40 of Defence of India Act gives authority to the Central Government to delegate its powers under the Act or the Rules to the State Government and others. But no delegation under that section is required for the exercise of the power under R. 30 by the State Government, for R. 30 itself lays down that the power therein can be exercised by the Central Government or the State Government. No further delegation therfore is necessary in favour of State Government.

Smt. Godavari Shamrao Parulekar Vs The State of Maharashtra
A.I.R. 1964 S.C. 1128 : 1964 (2) Cri. L.J. 222

(iii) The Power u/s 418 (1) of Delhi Municipal Corporation Act, 1957 can be delegated by the Commissioner. This section requires only the designation and not the particular officer in whose favour the delegation is made to be mentioned.

Kanwar Singh Vs The Delhi Administration
A.I.R. 1965 S.C. 871 : 1965 (2) Cri. L.J. Cri. L.J. 1

(iv) 'Delegation' as the word is generally used, does not imply a parting with powers by the person who grants the delegation, but points rather to the conferring of an autority also to do things which otherwise that person would have to do himself.

Note :—In this case the State Govt. under rule 30 of the Defence of India Act, delegated the power to all District Magistrates and then the State Govt. itself passed an order of detention of the appellant. The order was held to be **legal.**

Godavari S. Paruleker Vs The State of Maharashtra
A I.R. 1966 S.C. 1404 : 1966 Cri. L.J. 1067

Demenour of witness

Even in appeals against acquittals, the powers of the High Court are as wide as in appeals from conviction. But there are two points to be borne in mind in this connection. One is that in an appeal from acquittal, the presumption of innocence of the accused continues right upto the end, the second is that great weight should be attached to the view taken by the Session Judge before whom the trial was held and who had the opportunity of seeing and hearing the witnesses.

Note :Order of Session Judge acqutting the appellants was restored.

Wilayat Khan Vs The State of U.P.
A.I.R. 1953 S.C. 122 : 1953 Cri. L.J. 662

Denovo

High Court's Order quashing the charges against some accused and ordering retrial against others is highly illegal.

K. V. Krishnamurthy Iyer Vs The State of Madras
A.I R. 1954 S C. 406 : 1954 Cri. L.J. 1024

Deposition

(i) Even if the fact be true that the deposition (statement of witness in the court) was not read over that would only amount to a curable irregularity.

Held : *Further in the absence of prejudice which must be disclosed in an affidavit showing exactly where the record departs from what the witness actually said, there is no force in this objection.*

Bhagwan Singh Vs The State of Punjab
A.I.R. 1952 S C. 214 : 1952 Cri. L.J. 1131

Deposition-Contradict

The practice of the court is to contradict a witness with the earlier statement and parts thereof after declaring him hostile and then to use the record of the earlier statement as substantive evidence. It may be stated that it is highly desirable that the court should, before the transfer of the earlier statement to the record of the Session's case Under S. 288, CPC, indicate in a brief order why earlier deposition was being transferred to the record of the trial. This will make it quite clear to the accused that the earlier statement is likely to be used as substantive evidence against him.

But in this case sessions Judge informed the accused about his earlier statatement and asked certain questions about it.

Therefore, although the technical requirement of the section, namely, that an order should be passed to indicate that the statement is transferred so as to be read as substantive evidence, was not complied with, there does not appear to be any substantial departure from the requirements of the law. There is also no likelihood of any prejudice to appellant since he was informed, while he was being examined that the statement was being used under S. 288, Criminal Procedure Code, and was invited to say what he wished to say in defence.

Held :The High Court and Court below were right in using the statement as substantive evidence against the accused.

Periyasami ......Appellant
Versus
Satate of Madras······Respondent
A.I.R.1967 S.C. 1027 July Part, 1967 Cri. L.J. 965

Detain

(1) The condition precedent to the exercise of jurisdiction to detain under R. 30 (1) (b) is only the subjective satisfaction that it is necessary to detain the person concerned. (of. Rammanohar Lohia Vesrus State of Bihar 1966-1 SCR 709 (A.I.R. 1966 S.C. 740).

The difference in the words used in Rule 30 (1) (b) and Rule 30-A viz., satisfaction in one case and decision after taking into account all-the circumstances of the case in the other cannot be accidental but must be deliberate and purposeful. The phraseology used in Rule 30-A is not "in its opinion" or

"is satisfied" or "has reason to believe" etc., as often used in modern statutes and rules.

What precisely does the word "decide" in Rule 30-A mean? It is no doubt a popular and not a technical word. According to its dictionary meaning "to decide" means "settle (question, issue, dispute) by giving victory to one side ; give judgment (between, for, in favour of, against) ; bring, come, to a resolution" and "decision means" settlement, (of question etc., conclusion, formal judgment, making up one's mind, resolve. resoluteness, decided character." Where the Board finds that certain grounds furnished to the detenu did not in fact exist, it means that they did not exist at the time when the authority made up its mind to pass the order.

Reviewing authority may at the end of six months come to the conclusion that detention is still necessary as the detenu is likely to act in manner prejudicial to the State but the decision should be within the scope of R 30-A.

Note :—Appeal was dismissed.

P.L. Lakhanpal Vs Union of India
A.I.R. 1967 S.C. 908

Detenu

(i) The order of detention may by declared invalid If it can be proved to have been made by the authority concerned in malafide exercise of powers. The burden of proving the absence of good faith is upon the petitioner.

Ashutosh Lahiry Vs The State of Delhi
A.I.R. 1953 S.C. 451 : 1953 Cri. L. J. 1921

(ii) The fact that the detenu made no application for particulars was a circumstance which will be taken into consideration, in deciding whether the grounds can be considered to be vague.

Lawrence Joachim Joseph D'Souza Vs The State of Bombay
A.I R. 1956 S.C. 531 . 1956 Cri L J. 935

(iii) Section 3 (3) of Prevention Detention Act (1950) requires the authority to communicate the grounds of its order to the State Government, so that the latter might satisfy itself whether detention should be approved. Section 7 of the Act requires the statement of grounds to be sent to the detenu so that he might make a representation against the order. The purpose of the two sections is so different that it cannot be presumed that the expression "the grounds on which the order has been made" is used in S. 3 (3) in the same sense which it bears in S. 7.

Held :—The failure on the part of the District Magistrate to send along with his report under S. 3 (3) the very grounds which he subsequently communicated to the detenu under S. 7 is not a breach of the requirements of that sub-

(*Detenu-contd*)

section and that it was sufficiently complied with when he reported the materials on which he made the order.

Shamroo Vishnu Parulekar Vs The District Magistrate Thana
A.I.R. 1957 S.C. 23 : 1957 Cri. L.J. 5

(iv) Decision of the Government u/s 14 of Jammu and Kashmir Preventive Detention Act need not be communicated to the Detenu. The omission to convey the order made u/s 11 of the Indian Preventive Detention Act does not make the detention illegal or result in infringement of the petitioners fundamental right

Dwarka Das Bhatia Vs State of Jammu and Kashmir
A.I.R. 1957 S.C. 164, 1957 Criminal Law Journal 316

(v) The grounds, that is to say those conclusions of facts, must be in existence when the order of detention is made, and those conclusions of facts have to be communicated to the detenu as soon as may be.

If the information supplied in order to enable a detenu to make a representation, does not contain sufficient particulars, the detenu is entitled to ask for further particulars which will enable him to make a representation.
The order of the detention may also contain recitals of facts upon which it is based.

Naresh Chandra Ganguli for Sh. Ram Prasad Das Vs State of West Bengal
A.I R. 1959 S.C. 1335 : 1959 Cri. L J. 1501

(vi) Conditions regulating the restrictions on the personal liberty of a detenu are not privileges conferred on him, but are the conditions subject to which his liberty can be restricted. As there is no condition in the Bombay Conditions of Detention Order, 1951, prohibiting a detenu from writing a book or sending it for publication, the State of Maharashtra infringed the personal liberty of the law whereunder he is detained.

The State of Maharashtra Vs Prabhakar Pandurang Sanzgiri
A.I R. 1966 S C. 424 : 1966 Cri. L.J. 311

(vii) No restrictions other than those prescribed under sub/rule 4 of Rule 30 can be imposed on a detenu. If the appropriate authority seeks to impose on a detenu a restriction not so prescribed, the said authority will be interfering with the personal liberty of the detenu in derogation of the law whereunder he is detained. If that happens, the High Court, in terms of Article 226 of the Constitution, can issue an appropriate writ or direction to the authority concerned to act in accordance with law.

The State of Maharashtra Vs Prabhakar Pandurang Sanzgiri
A.I.R. 1966 S.C. 424 : 1966 Cri. L.J. 311

Detaining Authority.

(i) Both, the obligation to furnish particulars and the duty to consider whether the disclosure of any facts involved therein is against public interest, are vested only in the detaining authority.

Lawrence Joachin JosepDsounza Vs State of Bombay
A.I.R. 1956 S.C. 531 : 1956 Cri.L.J. 935

(ii) That the propriety or reasonableness of the satisfaction of the central or the state Government upon which an order of detention under S. 3, Prevention Detention is based, cannot be raised in Supreme Court and the Supreme Court can not be invited to undertake an investigation into sufficiency of the matters upon which such satisfaction purports to be grounded.

Sodhi Shamsher Singh Vs State of Pepsu
A.I.R. 1954 S.C. 276 : 1954 Cri.L J. 735

(iii) The publication and distribution of pamphlets by the detenu containing most filthy and abusive language, amounting to vitriolic attack upon the character and integrity of the chief justice of Pepsu who was accused of gross partiality and communal bias in the matter of recruiting officers for judicial posts and deciding cases between the litigants.

Held'—The Publication and distribution of pamphlets by detenu could not have any rational connection with the maintenance of law and order in the state or prevention of acts leading to disorder on public tranquility. So the detention is illegal.

Sodhi Shamsher Singh Vs State of Pepsu
A.I R. 1954 S.C. 276 : 1954 Cri. L.J. 735

(iv) The grounds of detention are not wholly the same as the facts in respect of which the prosecution was launched and the proceeding under S. 107 of the Criminal P.C. was initiated.

There are at last four items in the grounds of detention which are not the subject-matter of the prosecution, for instance grounds Nos.4,5,11 and 17. In these circumstances the contention that the detentions are in respect of the very same matters for which the prosecutions were launched and that the detention orders are in the nature of interference with the course of justice, and, therefore 'mala' fide is not sustainable.

Thakur Prasad Bania Vs State of Bihar
A.I.R. 1955 S.C. 631 : 1955 Cri.L.J. 1408

(v) Where an assessee has been arrested and is being detained in Jail in execution of a warrant of arrest accused under section 13 of the Bombay city land Revenue Act, 1876 for the recovery of the demand certificate u/s 46 (2) of the Income Tax Act, no complaint can be made of infringement of Art 21 of

(Detaining Authority-contd)

the constitution as S. 13 of Bombay City Land Revenue Act and S. 46 (2) of the Income Tax constitute the procedural law.

Purshottam Govindji Halai Vs Sh.B.M. Desai Addl. Collector of Bombay
A.I.R. 1956 S.C. 20 : 1956 Cri.L.J. 129

(vi) Detention for the purposes of S. 498 IPC must mean keeping back a wife from her husband or any other person having the care of her on behalf of husband with the requisite intention. Such keeping back may be by force; but it need not be by force. It can be the result of persuasion, allurement or blandishments which may either have caused the willingness of the woman, or may have encouraged, or co-operated with her initial inclination to leave her husband.

Almgir Vs State of Bihar
A.I R. 1959 S.C. 436 : 1959 Cri. L.J. 527

(vii) That in issuing the writ of Habeas Corpus the Court has the power in the case of infants to direct its custody to be placed with a certain person.

Gohar Begum Vs Suggi alias Nazma Begum
A.I.R. 1960 S C. 93 : 1960 Cri. L.J. 164

(viii) The service of the order of detention on a person whilst he was in jail custody is invalid.

Makhan Singh Vs The State of Punjab
A.I.R. 1964 S.C. 1120 : 1964 (2) Cri. L.J. 217

(ix) For holding that if the State Government decides to revoke an earlier order of detention the same day and serving another on the same day detention order on the detenu in Jail, for the two orders are really of the same nature and are directed towards the same purpose. The detention order is not illegal.

Smt. Godavari Shamrao Parulekar Vs The State of Maharashtra
A.I R. 1964 S.C. 1128 : 1964 (2) Cri. L J. 222

(x) The fact, that cases were reviewed subsequently on the 25th September, 1963 and 11th March, 1964 and the decision of the authority, was in fact, communicated to them would not validate the illegal continuance of the detention of the detenues after six months had expired from the date of their original detention.

Biren Dutta Vs Chief commissioner of Tripura
A.I.R. 1965 S.C. 596 : 1965 (1) Cri. L.J. 501

(xi) The order directing the detention of a citizen under R. 30 (1) (B), as well as the order incorporating the decision to continue the detention R. 30 A (8) must be in writing.

Biren Dutta Vs Chief Commissioner of Tripura
A.I.R. 1965 S C. 1965 (1) Cri. L.J 531

(Detaining Authority-contd)

(xii) It is for the detaining authority to be satisfied on the material before it, where it is necessary to detain a person under rule 30 and this question was held to be not justiciable.

Godavari S Parulekar Vs The State of Maharashtra
A.I.R. 1966 S.C. 1404 : 1966 Cri L J. 1967

(xiii) No officer other than the District Magistrate of the district can pass an order of detention under rule 30 (1) (b) of Defence of India rules. State Govt cannot delegate the power under the Defence of India Act to detain to any officer who is lower in rank than the District Magistrate. Additional District Magistrate is below the rank of District Magistrate. So the order of detention passed by the Additional District Magistrate is against law.

Ajaib Singh Vs Gurbachan Singh
A I.R. 1965 S.C. 1619

(xiv) There is no difficulty if two ministers successively being satisfied that it is necessary to detain a person for different reasons and then their order is carried out by one order of detention duly authenticated.

Godavari S. Parulekar Vs The State of Maharashtra
A.I.R. 1966 S.C. 1404 : 1966 Cri L.J. 1067

(xv) The satisfaction of the Government which justifies the order of detention under R. 30 is a subjective satisfaction. A court cannot normally enquire whether grounds existed which would have created that satisfaction on which alone the order could have been made in the mind of a reasonable person. If, therefore, an authenticated order of detention is on its face regular and inconformity with the language of R. 30, it is not ordinarily open to a Court to enter into an investigation about the sufficiency of the material on which the order of detention is based.

Jaichand Lal Sethia Vs The State of West Bengal
A.I.R. 1967 S.C. 483 : 1967 Cri. L.J. 520

Detention Order

It is difficult to divorce the order of detention from the order of confirmation for without confirmation the order of detention would have no legal sustenance. The Rule provides that the order of detention shall forthwith be reported, if made by an officer empowered by the Administrator to the administor and that the Administrator shall, after taking into account all the circumstances of his case, either confirm the detnetion order or cancel it. It is pursuant to the detention order so confirmed that a person remains detained, and the review which is in tended to be made under R. 30-A (8) is that order which is confirmed.

Sadhu Singh Vs The Delhi Administration
A I.R. 1966 S.C. 91

(ii) The mere fact, that the detention order is passed during the pendency of habeas corpus proceedings, cannot by itself lead to the conclusion that the order is vitiated by malice in law. It depends on the circumstances of the case. The detenu would have to prove not only that the detention order has been passed during the pendency of habeas corpus proceedings but also that there are other facts showing malice.

If the Government considers of detention, which is the subject-matter of challenge, to be invalid, there is no reason why it should not pass a valid order.

Note :—In this case, three successive orders of release and then detention were passed, before the orders of release were actually carried out but those were held legal.

A.I R. 1964 S.C. 1128 was declared no authority for the absolute preposition of law.

[Godavari S. Parulekar Vs The State of Maharashtra
A.I.R. 1966 S C. 1404 (Page 1407) 1966 Cri. L.J. 1067

Direction

(i) The two persons Adi Reddy and Narasimha Reddy, with their followers, all of them armed, move about together for a set purpose and one gives instructions to the other and keeps himself on the spot in readiness to see that it is carried out, and the other carries it out, it is hardly possible to say that the act is not one which was done in the furtherance of the common intention of both.

Mathurala Adi Reddy Vs The State of Hydrabad
A.I.R. 1956 S.C. 177 : 1956 Cri. L.J. 341

(ii) Where the evidence of certain witness is not given by the prosecution, an adverse inference can be drawn. The judge should direct the jury to take the same. If these directions have not been given, this defect is not likely to have caused any serious prejudice.

Sardul Singh Caveeshar Vs The State of Bombay
A.I.R. 1957 S.C. 747 : 1957 Cri. L.J. 152

Direct Evidence

(i) It is not necessary to adduce direct evidence of the common intention. The common intention may be inferred from the surrounding circumstances and the conduct of the parties.

Rishdeo Pande Vs State of Uttar Pradesh
A.I.R. 1955 S.C. 331 : 1955 Cri. L.J. 373

(ii) Where the direct evidence proving the necessary criminal intention is lacking in the case, and the circumstancial evidence is too meagre to support any safe

conclusion as to the intention with which the accused made the entry complained of, it cannot be held that the prosecution has proved the necessary criminal intention.

Note :—Appeal was allowed.

Raghubansh Lal Vs The State of Uttar Pradesh
A I.R. 1957 S.C. 486 : 1957 Cri L.J. 595

Disappear

Where the accused has caused the evidence of the two offences under section 330 and 348 Penal Code, committed by the same act to disappear, commits by the same act two separate offences under section 201 of I.P.C. The case is not covered by section 71 of the I.P.C. or by section 26 of the General Clauses Act and the punishment for the two offences cannot be limited under those sections.

Roshan Lal Vs The State of Punjab
A.I.R. 1965 S.C. 1413 . 1965 (2) Cri.-L.J. 426

Discharge Retrial

Supreme court in the normal course orders for retrial when jury trial is set aside on the grounds of misdirection or non direction. But in this case their Lordships instead of ordering retrial, discharged the accused.

A I.R. 1955 S.C. 287 : 1955 Cri.L.J. 857

Discharge of Duty

It is not necessary for an accused person under clause (d) of Section 5 (1) of Prevention of Corruption Act while misconducting himself, should have done so in the discharge of duty and thereby obtains any valuable thing or pecuniary advantage. It is equally wrong if a public servant takes money from third party by corrupt or illegal means or otherwise abusing his official position, in order to corrupt some other public servant he commits offence u/s 5 (1) (b) read with section 5 (2) of the Prevention of Corruption Act.

Dhaneshwar Narain Saxena Vs The Delhi Administration
A.I.R 1962 S.C 195 · 1962 (I) Cri. L J. 203

Discharge

(ii) The moment the pardon was tendered to the accused by the District Magistrate he must be presumed to have been discharged and he ceases to be an accused and becomes a witness

A. J. Peiris Vs The State of Madras
A I.R. 1954 S C. 616 1954 Cri. L.J. 1638

(iii) It very often happens that the facts mentioned in the charge sheet constitute one or more offences triable under Chapter XXI as warrant cases and also

(*Discharge-contd*)

one or more other offences triable under Chapter XX (Summon cases). The order of discharge being only in respect of the offences triable under Chapter XXI (warrant Cases) does not affect in any way the position that charges of offences triable under Chapter XX also are contained in the police report.

Where the police report stated facts which constituted an offence under S. 332 I.P C., but these facts necessarily constitute also minor offence under S. 323 I.P.C. The Magistrate took cognizance under S. 190 (1) (b) Cr. P.C., of the offence under S. 332 I P C. cannot but have also taken cognizance of the minor offence undor S. 323 I P C. Consequently, even after the order of the discharge was made in respect of the offence under S. 332 I.P.C. the minor offence 323 I.P.C. of which he had also taken cognizance remained for trial as there was no indication to the contrary and for wchich the appellant was convicted. The Procedure under chapter XX has been rightly followed.

Note :—Appeal was dismissed.

Pramatha Nath Mukherjee Vs The State West Bengal
A.I.R. 1960 S C. 810 : 1960 Cri. L.J. 1165

(iv) Magistrate has jurisdiction to discharge or commit the accused to the Court of Sessions merely on the basis of the documents referred in Section 173 Cr. P.C.

Shri Ram Vs. State of Maharashtra
A.I.R. 1961 S.C. 674 : 1961 (1) Cri. L.J. 760

(v) If a Magistrate forms an opinion that no case exclusively triable by a court of Session is disclosed, but a less serious offence, which it is within the competence of Magistrate to try, is disclosed. This will amount to an implied discharge of that offence and the revisional power u/s437 Cr. P.C. can be invoked although there is no express order of discharge.

Thakur Ram Vs the State of Bihar
A I.R. 1966 S.C. 911 : 1966 Cri. L.J. 700

(vi) The words of S. 207 and 209 A Cr P.C. are not the same and it is possible to say that the force of the two sections is also not the same, and that S. 209 gives a power to enter upon the merits of a case in manner which S. 207-A does not warrant. But the test for discharging the accused must, in a large way, be the same under both the sections.

K P. Raghavain Vs M.H. Abbas
A.I R. 1967 S.C 740

(vii) The appellant and others were tried for an offence u/s 307/148/149 I PC. but the enquiry Magistrate after examining 11 Prosecution witnesses decided u/s 251-A of the Criminal Procedure Code, to try the petitioner for offences

(*Discharge-contd*)

u/s 326 and 338 IPC, triable within his own competence.

It is manifest that the order of the Magistrate is tantamount to an implied order of discharge and the Additional Sessions Judge had, **therefore, jurisdiction, under S. 437, Criminal Procedure Code, to set aside the order of the Magistrate and to order that the accused should be committed to trial in the Court of Sessions on the major charge under section 307** I.P.Code. There is nothing in the language of S 437, Criminal Procedure Code from which it could be said that the power of the Session Court under that section can be exercised only when the magistrate has made an express order of discharge. The section 209 (1) Criminal Procedure Code does not contemplate that an express order of discharge should be made in a case where upon the same facts it is possible to say that though no offence exclusively triable by a Court of Session is made out, an offence triable by a Magistrate is nevertheless made out and the Magistrate thereafter proceeds with the trial of that minor offence.

The language used in S 437, Criminal Procedure Code is wide and there is nothing in that section from which it could be gathered that the power can be exercised only when the Magistrate has made an express order of discharge.

Held .—The Additional Session Judge had the jurisdiction to set aside the order of the Magistrate and direct the 'commitment' of the appellant to Session Court on charge u/s 307 of the Indian Penal code.

Ramekbal Tiwary Vs Madan Mohan Tiwary
A.I R. 1967 S.C, 1156 (August Part) ·1967 Cri. L.J. 1076

(viii) Refusal to summon by the Magistrate does not amount to discharge as there cannot be any question of discharge when the accused was not sent up upon the charge sheet submitted by the Police.

Raghubans Dubey........ Appellant
Versus
State of Bihar ....Respondent
A.I R. 1967 S.C. 1167 (August Part) · 1967 Cri. L J. 1081

Discovery

The recovery of beard and mask at the instance of the accused from the house of the accused and in the presence of the witnesses is inadmissible if the police already knew where they were hidden.

Aher Raja Khima Vs The State of Saurashtra
A.I.R. 1956 S.C. 217 . 1956 Cri. L.J. 426

Discrepancy

(i) Where the telegram given to the Police station almost immediately after the

(*Discrepancy-contd*)

murder does not mention the names of the assailants; is a strong factor in favour of the accused.

Wilayat Khan Vs The State of U.P.
A.I R. 1953 S C. 122 : 1953 Cri. L J. 662

(ii) It is an error to make no efforts to disengage the truth from the falsehood and to sift the grain from the chalf and to take an easy course of holding that the evidence is discrepent and the whole case is untrue.

Abdul Gani Vs The State of Madhya Pradesh
A I.R 1954 S.C. 31 : 1954 Cri. L.J. 323

(iii) Ommission have not always the same significance as contradictions but where it is patent that the two sets of statements are wholly inconsistent and irreconciliable, that obviously leads to a very serious infrimity in the character of witness.

Sarwan Singh Vs The State of Punjab
A.I.R. 1957 S.C. 637 · 1957 Cri. L.J. 1014

Discretion

(i) The power to enhance a sentence from transportion to death should very rarely be exercised and only for the strongest possible reasons. It is not enough for an appellate court to say, or think, that if left to itself it would have awarded the greater penality because the discretion does not belong to the appellate Court but to the trial Judge and the only ground on which an appellate court can interfere is that the discretion has been improperly exercised as for example where no reasons are given and none can be inferred from the circumstances of the case, or where the facts are so gross that no normal judicial mind would have awarded the lesser penalty.

Note :—Sentence of death was reduced to that of transportation and the order of session judge was restored.

Dalip Singh Vs The State of Punjab
A.I.R. 1953 S.C. 364 · 1953 Cri. L J. 1965

(ii) A case in which no one has been convicted for his own act but is being held vicariously responsible for the act of another or others. In cases where the facts are more fully known and it is possible to determine who inflicted blows which were fatal and who took a lesser part, it is a sound exercise of judicial discretion to discriminate in the matter of punishment It is an equally sound exercise of judicial discretion to refrain from sentencing all to death when it is evident that some would not have been if the facts had been more fully known and it had been possible to determine, for example, who hit on the head or who only on a thumb or an ankel ; and **when there are no means**

(Discretion-contd)

of determining who dealt the fatal blow, a judicial mind can legitimately decide to award the lesser penalty in all the cases.

Dalip Singh Vs The State of Panjab
A.I R 1953 S.C. 364 . 1953 Cri. L J 1964

(iii) Supreme Court is reluctant to interfere with the decision of the lower courts unless the discretion has not been judicially exercised. A number of persons joined in an attack at two in the morning on helpless persons who were asleep in bed. **At least** one was armed either with gun or a pistol. He shot one man **dead** and attempted to murder another and band looted their property. The sentence of two years u/s 148 I,P.C., four years u/s 307 I.P.C. and transportation are not severe and so calls for no interference in the discretion of the lower court

Nar Sing Vs State of Uttar Pradesh
A.I.R. 1954 S.C. 457

(iv) A question of sentence is a matter of discretion and it is well settled that when discretion has been properly exercised along accepted judicial lines, an appelate court should not interfere to detriment of an accused person except for very strong reasons which must be disclosed on the face of the judgement.

The only reason that the High Court gave is that P deceased was unarmed and as the attack was made with a knife it cannot be said that appellant did not act in a cruel or unusual manner. So the sentence from three years to ten years was enhanced.

Held :—In these circumstances the High Court was not justified in enhancing the sentence and has wrongly interfered with the discretion of the lower court.

Bed Raj Vs State of Uttar Pradesh
A.I.R. 1955 S.C 778 : 1955 Cri. L.J. 1642

(v) It is not an improper exercise of discretion for the court to grant consent to withdraw from prosecution to the Public Prosecution before evidence is taken, if it was reasonably satisfied otherwise, that the evidence, if actually taken, is not likely to result in conviction.

The State of Bihar Vs Ram Naresh Pandy
A I.R. 1957 S.C. 389 · 1957 Criminal Law Journal 567

(vi) Art-136 of the Constitution confers a wide discretionary power on the Supreme Court to entertain appeals in suitable cases not otherwise provided for by the Constitution.

Sanwat Singh Vs State of Rajasthan
A.I.R. 1961 S.C- 715 : 1961 (1) Criminal Law Journal 766

(*Discretion-contd*)

(vii) Where the offences are triable both by an ordinary Criminal Court having jurisdiction to try the said offences and a court martial. The discretion of trying is with the designated officer under section 125-126 of the Army Act but where the army officer has not exercised his discretion then the criminal court can exercise its ordinary jurisdiction.

Major E.G. Barsay Vs The State of Bombay
A.I.R. 1961 S C. 1762 1961 (2) Criminal Law Journal 828

(viii) The power of 154 of evidence Act i.e. Re-examination is entirely discretionary and is left to the court to exercise the power when the circumstances demand. Court can permit party calling a witness to put questions in the nature of cross examination after the stage of cross-examination.

Note.—In case A.I.R. 1964 S. C. 1563 a witness faithfully deposed in the examination-in-chief but in cross-examination agreed with the Defence version. So the prosecution after the cross-examination was allowed to cross-examine his own witness.)

Dahyabhai Chhaganbhai Vs State of Gujarat
A.I R. 1964 S.C. 1563 : 1964 (2) Criminal Law Journal 472

Proceedings u/s 491 Cr. P.C. is a discretionary one.

Mohd. Ikram Husain Vs State of Uttar Pradesh
A.I.R. 1964 S.C. 1625 : 1964 (2) Cri. L. J. 590

(xi) The provisions of Section 437, (Code of Criminal Procedure) however, do not make it obligatory upon a Sessions Judge or a District Magitrate to order commitment in every case where an offence is exclusively triable by a Court of Session. The law gives a discretion to the revising authority and that discretion has to be exercised judicially.

Note :—In the case reported in 1966 SC 911 the Masistrate during inquiry came to the conclusion that facts do not warrant a case exclusively triable by the Court of Session and tried himself u/s 392 IPC when the prosecution pressed their case u/s 386 or 387 I.P.C. Magistrate's order was confirmed.

Thakur Ram Vs The State of Bihar
A.I.R. 1966 S.C. 911 : 1966 Cri. L.J. 700

Discrimination

Art-14 of the Constitution does not render section 197 Cr.P.C. ultra vires as the discrimination is based upon a rational classification. Public servants have to be protected from harassment in the discharge of official duties while ordinary citizens not so engaged do not require this safe-guard.

Nand Ram Vs H.C. Bhari
A.I R. 1956 S.C. 44 : 1956 Criminal Law Journal 140

Dishonest

The existence of the unauthorized means for abstraction is prima facie evidence of dishonest abstraction by some person. To bring home the charge under Section 39 of the Electricity Act, the prosecution must also prove that consumer is responsible for the tempering. The prosecution must prove beyond reasonable doubt.

Jagannath Singh Vs B.S. Ramaswamy
A.I.R. 1966 S.C. 849 : 1066 Cri. L J. 697

Dismissal—Appeal

(i) The appeal of one accused was dismissed summarily by one bench of the High Court while the appeals of other accused were admitted by another Bench. The appeals arise out of the same judgment and relate to the same charge to the jury. The Supreme Court is constrained to express its disapproval of the summary rejection of appeals which raise issues of substance and importance.

A.I.R. 1955 S.C. 287 : 1955 Cri. L J. 857

(ii) Magistrate can accept the plea of self-defence supported by report of enquiry officer U/s 202 Cr.P.C. and also the statement of witnesses and to dismiss complaint without issue of process.

Vadilal Panchal Vs Dattatraya Dulaji Ghadigaonkar
A.I R. 1960 S.C. 1113 : 1960 Cri.L J. 1499

(iii) Under Section 203 of Cr P.C. the judgement which the magistrate has to from must be based on the statements of the witnesses, and of the complaint and the result of the investigation or inquiry if any He must apply his mind to the materia's and from his judgment whether or not there is sufficient ground for proceedings. If the magistate has acted like it then it can not be said that he has acted erroneously.

Pramatha Nath Vs Saroj Ranjan Sarkar
A.I.R. 1962 S.C 876 : 1962 (1) Cri. L.J.

(iv) An order of dismissal under section 203 Cr. P C. is no bar to the entertainment of a second complaint on the same facts but it will be entertained only in exceptional circumstances e.g., where the previous order was passed on an incomplete record or where the facts could not be brought on record in spite of due diligence.

Note :– In case 1962 S C. 876 by majority view the fresh (Second) complaint was dismissed and was held that the bringing of fresh complaint is a gross abuse of the process of the court and is not with the object of furthering the interest of justice.

Pramtha Nath Vs Saroj Ranjan Sarkar
A.I R. 1962 S.C. 876

(vi) Section 203 of the Code of Criminal Procedure provides that wehre the Magistrate dismisses a complaint because in his judgment there is no sufficient ground for proceeding with trial, he shall record his reasons for doing so. Magistrate's order of dismissal without assigning reasons is nullity.

Chandra Deo Singh Vs Prokash Chandra
A I R. 1963 S.C 1430 : 1963 (2) Cri. L.J. 397

Disobedience

There may be circumstances where officials entrusted with the duty of carrying out a legal order may have valid reasons to doubt the authenticiticy of the order conveyed to them by interested parties and in those circumstances it may be said that there was no wilful disobedience of the order made.

Note :—In this case their Lordship held that there was no valid reason to doubt the authenticity of the order conveyed to the officers even though the order was not officially communicated to them. Sentence under the contempt of conrts Act was maintained

Hoshiar Singh Vs Gurbachan Singh
A.I.R. 1962 S.C. 1089 1962 (2) Cri. L.J. 236

Dispose

The provisions of Ss. 236 and 237 Cr. P.C. are clear enough to enable a court to convict an accused person even of an offence with which he had not been charged if the court is of the opinion that the provisions of S. 236 apply, and by virtue of the provisions of S. 237 the accused although charged with one offence, and it appears in evidence that he committed a different offence for which he might have been charged under the provisions of S. 236, can be convicted of the offence which he is shown to have committed, although he was not charged with it. The High Court erred in ordering a retrial of the appellants and should have decided, on the evidence before it, whether any offence had been committed by the appellants.

Note :—In this case charge was u/s 467 against Government servant for making false entries in transport permits with intent to defraud Government Conviction u/s 477-AIPC held not illegal as the case is coverd by the provisions of Ss. 236 and 237 CrPC.

G.D. Sharma Vs The State of Uttar Pradesh
A.I R 1960 S C. 400 : 1960 Cri. L.J. 541

Disposition

Disposition means the inherent qualities of power.

Bagwan Swarup Vs TheState of Maharashtra
A,I.R. 1965 S.C. 682 : 1965 (1) Cri. L.J. 608 (May Part)

Distance

If there were burnt edges of the wound, the distance between the muzzle-

(*Distance-contd*)

muzzle and the victim would only be a few inches and not more than nine inches.

Santa Singh Vs The State of Panjab
A.I R. 1956 S C. 526 : 1956 Cri. L J. 930

Distinct

Distinct means not identical. Two offences would be distinct if they are not in any way inter-related.

Banwarilal Jhunjhunwala Vs Union of India
A.I R. 1963 S C. 1620 : 1963 (2) Cri. L J. 529

Distinct Offence

S. 34 of I P.C. does not create a distinct offence, it only lays down the principle of joint criminal liability,

Gurdata Mal Vs the State of Uttar Pradesh
A.I.R. 1965 S.C. 257 : 1965 (1) Cri. L J 242

Distinction

The leading feature of section 34 is the element of participation in action, whereas membership of the assembly at the time of committing of the offence is the important element in section 149 IPC The two sections cannot be said to have the same meanings.

Chikkarange Gowda Vs State of Mysore
A.I.R. 1956 S.C. 731 1956 Cri. L.J. 1365

District Magistrate

(i) The transfer of Sh Bhalla and handing over the charge to Sh. Lall Singh who will hold the current charge of the office of the Deputy Commissioner, Amritsar, Sh. Lall Singh could not and did not become the District Magistrate of Amritsar in the absence of a Notification u/s 10 (1) of the Criminal Procedure Code by the State Government.

Notification need not recite in terms that it was made under section 10 (1) of Cr. P C Order of State Government appointing an officer, District Magistrate of a district is sufficient. In absence of such an order no officer in the district can claim to be a D strict Magistrate.

Ajaib Singh Vs Gurbachan Singh
A I R. 1965 S C 1619

(ii) Even if the Additional District Magistrate is invested with all the powers of District Magistrate under the Criminal Procedure Code or under any other law for the time being in force, he is still below the District Magistrate for certain purposes mentioned in S. 10 (3) of the Code. The order of etentiond

passed by the Additional District Magistrate under the Defence of India Act or rules is without jurisdiction and authority.

Ajaib Singh Vs Gurbachan Singh
A I.R. 1965 S.C. 1619

Dhatura

Stramonium and Dhatrua leaf are poisonous and in no system of medicine, except perhaps Ayurvedic system, the Dhatura leaf is given as cure for Guinea worm. When the appellant prescribed the medicine without thoroughly studying what would be the effect of giving 24 drops of stramonium and a leaf of dhatura acted rashly and negligently.

Juggankhan Vs State of Madhya Pradesh
A.I.R. 1965 S C. 831 (June Part) 1965 Cri L.J. 763

Document

(i) Magistrate can discharge or commit accused merely on the basis of documents referred to in section 173 Cr.P.C.

Shri Ram Vs The State of Maharashtra
A.I R. 1961 S.C. 674 : 1961 (1) Cri. L.J. 760

(ii) There is no provision under S. 19-A of Foreign Exchange Regulation Act or any other section of the Act that the documents be returned to the party from whose custody they were seized, without an order from the Magistrate and that therefore no order for their return can be made by any authority. No such express provision is necessary. Documents seized have to be returned if the law provides that they are not to be retaind after a certain period of time. Such a direction under the Statute is sufficient justification and authority for the person in possession of the documents to return them to the persons from whose possession they had been seized. Provisions are necessary for retaining documents of others and not for returning them to the persons entitled.

Nilratan Sircar Vs Laksham Narayan Ram Nisws
A.I.R. 1965 S.C. 1 1965 (1) Cri. L J. 100

Document Forged

An offence punishable under Section 471 of Penal Code being one of fraudulently or dishonestly using as genuine any document which the accused knows or has reason to believe to be a forged document, does not fall within the ambit of section 479 (A) (1) of Cr. P.C. and therefore, the authority of the Court to act under Section 476 of the Code is not impaired by sub Section 6 of Section 479-A I.P C.

Babu Lal Vs The State of Uttar Pradesh
A.I R. 1964 S.C. 725 : 1964 (1) Cri. L.J. 555

Doctrine

Doctrine of severability applies to both civil and criminal law

Jia Lal Vs The Delhi Administration
A.I.R. 1962 S.C. 1781

Domicile

Domicile of a person cannot be determined by his family coming to India only and without any finding that he had established a home for himself there. In the absence of factum of residence Indian domicile cannot be ascribed to him.

Central Bank of India Ltd. Vs Ram Naram
A.I.R. 1955 S.C. 36 : 1955 Cri. L.J. 152

Dominion

In the case of partnership, every partner has dominion over the partnership property by reason of the fact that he is a partner. This is a kind of dominion which every owner of property has over his property. But it is not dominion of this kind which satisfies the requirements of section 405 of I.P.C.

A Partner has undefined ownership along with the other partners over all the assets. If he chooses to use any of them for his own purpose he may be accountable civilly to the other partners but does not commit any criminal misappropriation.

Velji Raghavji Patel Vs The State of Maharashtra
A I.R. 1965 S.C. 1433 : 1965 (2) Cri. L.J. 431

Done

It is essential for the application of section 34 IPC. that the accused join in the actual doing of the act and not merely in planning its preparation. If the accused was not present at the actual commission of the offence he cannot be convicted with the aid of section 34 I.P.C.

A I R. 1955 S C. 287 1955 Cri. Cri L.J. 857

Double Jeopardy

(i) There is no double Jeopardy if a smuggler has been seriously dealt with by Sea Custom Officer and then the punishment by court of Law is awarded.

Thomas Dana Vs State of Punjab
A I.R 1959 S C. 375 : 1959 Cri. L.J. 392

(ii) If the offences were different then there is no question of the rule as to double jeopardy as embodied in Art-20 (2) of the Constitution being applicable. Offence U/s 409 I.P.C and that under section 105, Insurance Act are not

same, so two trials are not barred by Art. 20 (3) of the Constitution or by Section 26 of General Clauses Act.

The State of Bombay Vs S.L. Ahte
A.I.R. 1961 S.C. 578 : 1961 (1) Cri. L.J. 925

Doubt

Benefit of doubt goes to the accused and not to the prosecution. It is a court's duty to convict a guilty person when the guilt is established beyond reasonable doubt, no less than it is its duty to acquit the accused when such guilt is not so establishsd.

Baladin Vs State of Uttar Pradesh
A.I.R. 1956 S.C. 181 : 1956 Cri. L J. 345

Drugs

The definition of drugs means medicine and includes also substance intended to be used for in the treatment of diseases of human beings or animals e g. Bandage etc.

Chimanlal Jagjivandas Vs State of Maharashtra
A.I.R. 1963 S.C. 665 : 1963 (1) Cri. L.J. 621

Due Diligence

Due diligence must also be proved by the Manager or occupier of the machine.

The State of Gujarat Vs Jethalal Ghelabhai Patel
A.I.R. 1964 S.C. 779 : 1964 (1) Cri. L. J. 558

Duly Submitted

The legislature has made the certificate of the examination u/s 129 A Sub-Section (1) and (2) of the Bombay Prohibition Act admissible without formal proof but by sub section (8) of 129-A the other method of collection of evidence for proving that a person accused consumed an intoxicant is not precluded and a report of any registered medical practitioner is also admissible u/s 129-B of the Act.

Ukha Kolhe Vs The State of Maharashtra
A.I.R. 1963 S.C. 1531 : 1963 (2) Cri. L.J. 418

Duration

(i) The duration of imprisonment for life is not definitely fixed. Section 57 of Penal Code does not say that the transportation for life shall be deemed to be for twenty years.

Gopal Vinayak Godse Vs The State of Maharashtra
A.I.R. 1961 S.C. 600 : 1961 (1) Cri L.J. 736

(ii) Unless the sentence of life imprisonment is commuted or remitted by appropriate authority under the provisions of Indian Penal Code, a prisoner is bound in law to serve the life term in prison. Government alone can remit sentence.

Gopal Vinayak Godse Vs State of Maharashtra
A.I.R. 1961 S.C 600 : 1961 (1) Cri. L J. 736

Duty

(i) The court cannot normally compel the prosecution to examine a witness which it does not choose to and the duty of a fair prosecutor extends only to examine such of the witnesses as are necessary for the purpose of unfolding the prosecution story on its essentials.

Sardul Singh Vs The State of Bombay
A.I.R. 1957 S.C. 747 1957 Cri. L.J. 1325

(ii) The court has to pay due regard to the feelings and religious emotions of different classes of persons with different beliefs irrespective of the consideration whether or not they share those beliefs.

S. Veerabadran Chettiar Vs Ramaswari Naicher
A.I.R. 1958 S.C. 1032 : 1958 Cri. L J. 1565

(iii) It is the duty of the High Court under Section 99D of Cr P. C. to set aside an order of forfeiture if it is not satisfied that the grounds, on which the Government formed its opinion that the books contained matters the publication of which would be punishable under any one or more of sections 124-A, 153 A or 295 A of the Penal Code justify that opinions It is not its duty to do more and to find for itself whether the book contained any such matter whatsoever.

Harnam Singh Vs State of Uttar Pradesh
A.I.R. 1961 S.C. 1662 : 1961 (2) Cri. L.J 815

(iv) It is a court's duty to convict a guilty person when the guilt is established beyond reasonable doubt, no less than it is its duty to acquit the accused when such guilt is not so established.

Harbans Singh Vs The State of Punjab
A I R. 1962 S.C. 439 : 1962 (1) Cri. L.J. 479

(v) It is not necessary to constitute the offence under cl. (d) S. 5 of the Prevention of corruption Act that the public servant must do something in connection with his own duty and thereby obtain any valuable thing or pecuniary advantage. It is equally wrong to say that if a public servant were to take money from a third person, by corrupt or illegal means or otherwise abusing his official position, in order to corrupt some other public servant, without there being any question of his misconducting himself in the discharge of his own duty, he has not committed an offence under S 5 (1) (d). It is also erroneous to hold

(Duty-contd)

that the essence of an offence under S. 5 (2). read with S. 5 (1) (d), is that the public servant should do something in the discharge of his own duty and thereby obtain a valuable thing or pecuniary advantage.

Dhameshwar Narain Vs The Delhi Administration
A.I R. 1962 S.C. 195 : 1962 (1) Cri. L J. 203.

(v) It is not the duty of the court to draw attention of accused to the provisions of Section 342 (2) of Criminal Procedure Code

The State of Andhra Pradesh Vs Cheemalapati Ganeswara
A I.R. 1963 S.C. 1850 : 1963 (2) Cri. L.J.671

(vi) The maxim "*falsus in Uno, falsus in omnibus* (falsi in one thing, false in every thing)" is neither a sound rule of law nor a rule of practice. Hardly one comes across a witness whose evidence does not contain a grain of untruth or at any rate exaggerations, embroideries or embelishment. It is therefore the duty of the court to secrutinise the evidence carefully but it cannot obviously disbelieve the substratum of the prosecution case or the material parts of the evidence and reconstruct a story of its own out of the rest.

Note :—In this case session judge disbelieved the prosecution story but after reconstructing a new story of its own convicted the appellant. Appeal was accepted.

Ugar Ahir Vs The State of Bihar
A.I.R. 1965 S.C. 277 : 1965 (1) Cri. L J. 256

Duty of police

There is no justification for the police authorities to bring about the taking of a bribe for supplying the bribe money to the giver where he has neither got it nor has the capacity to find it for himself. It is the duty of the police authorities to prevent crimes being committed. It is no part of their busine s to provide the instrument of offence.

Rao Shiv Bahadur Vs State of Vindh.-P
A.I.R. 1954 S.C. 322 (334, : 1954 Cri. L J. 910

Duty of Prosecution

Where death is due to injuries or wounds caused by a lethal weapon, it is always the duty of the prosecution to prove by expert evidence that it was likely or at least possible for the injuries to have been caused with the weapon with which and in the manner in which they are alleged to have been caused. Where, it is doubtful whether the injuries were caused by a gun or a rifle and the prosecution case is that the appellant was armed with gun but where it seems more likely that those were caused by rifle, it was the duty of prosecution to produce expert.

(*Duty of Prosecution-Contd*)

Note :—The appeal was allowed under such circumstances.

Mohinder Singh Vs The State.
A I R 1953 S.C. 415 : 1953 Cri. L J. 1761

(ii) It is the duty of the prosecution in order to bring home the guilt of a person u/s 411 IPC to prove.

(i) That the stolen property was in the possession of the accused.
(ii) That some person other than the accused had possession of the property before the accused got possession of it.
(iii) That the accused had knowledge that the property was stolen property.

Note :—In case AIR 1954 S.C. 39 prosecution could not prove that the stolen property was in the possession of the accused and the same was recovered from open place. So the appeal was accepted.

Trimbak Vs The State of Madhya Pradesh
A I.R. 1954 S.C. 39 : 1954 Cri L.J 335.

(iii) It is undoubtedly the duty of the prosecution to lay before the court all material evidence available to it which is necessary for unfolding its case but it would be unsound to lay down as a general rule that every witness must be examined even though his evidence may not be material or even if it is known that he has been wonover or terrorised.

Masalti Vs The State of Uttar Pradesh
A.I R. 1965 S.C. 202 : 1965 (1) Cri L.J 226

Dying Declaration

(i) It is not safe to convict an accused person merely on the evidence furnished by a dying declaration without further corroboration because such a statement is not on oath and is not subject to cross examination and because the maker of it might be mentally and physically in a state of confusion and might well be drawing upon his imagination while he was making the declaration.

Ram Nath Vs The State of Madhya Pradesh
A I R. 1953 S C. 420 : 1953 Cri. L J. 1772

(ii) Unless one is certain about the exact words uttered by the deceased, no reliance can be placed on verbal statements of witnesses and such oral declaration made by a deceased

Ram Nath Vs The State of Madhya Pradesh
A.I R. 1953 S.C. 420 · 1953 Cri. L J. 1772

(Dying Declaration contd)

(iii) The dying declaration, though incomplete otherwise was complete so far as the accused having shot the deceased was concerned, can certainly be relied upon by the prosecution

Abdul Sattar Vs State of Mysore
A.I.R. 1956 S.C 168 : 1956 Cri. L.J. 334

(iv) Where the testimony of the eye witness is inconsistent with the medical evidence, it is unsafe to rely upon such dying declration as when the dying declaration according to the prosecution has been made at two different places but from the doctor's evidence it is found that it was improbable that the deceased would have been in a position to walk or to speak, the dying declaration be disregarded.

Bhagwan Dass Vs State of Rajasthan
A.I.R. 1957 S.C. 589 : 1957 Cri. L.J. 889

(v) When the dying declaration, is a long document and is a narrative of a large number of incidents which happened before the actual assault. Such long statements which are more in the nature of First Information Reports than recital of the cause of death or circumstances resulting in it are likely to give the impression of their being not genuine or not having been made unaided and without prompting. The dying declaration is the statement made by a person as to the cause of his death or as to any of the circumstances of the transaction which resulted in his death and such details which fall outside the ambit of this are not strictly within the permissible limits laid down by S. 32 (1) of the Evidence Act, and unless absolutely necessary to make a statement coherent or complete, should not be included in the statement.

Note :—Dying declaration was held to be unprompted and unaided althoug it was like FIR as there was no relation or friend of the deceassed when dying declaration was recorded

Bakhshish Singh Vs The State of Punjab
A.I R. 1957 S.C. 904

(vi) Deceased gave the narrative in Punjabi but the statement was taken down in Urdu. Held that in the Punjab the language used in the subordinate courts and that employed by the Police for recording of statements has always been Urdu and the recording of the dying declaration in Urdu cannot be a ground for saying that the statement does not correctly reproduce what was stated by the declarant. So this is wholly inadequate reason for rejecting the dying declaration.

Bakhshish Singh Vs The State os Punjab
A.IR. 1957 S.C. 904

(Dying Declaration-Contd)

(vii) Dying declaration cannot be equated with the evidence of an accomplice or the evidence furnished by a confession as against the maker.

Khushal Rao Vs State of Bombay
A.I.R. 1958 S.C. 22 : 1958 Cri. L.J. 106

(viii) It cannot be laid down as an absolute rule of law that a dying declaration cannot be the sole basis of conviction unless it is corroborated. It should be subject to close scrutiny but once the court has come to the conclusion that the dying declaration was the truthful version as to the cause of death then there is no need of further corroboration.

Khushal Rao Vs State of Bombay
A.I.R. 1958 S.C 22 : 1958 Cri. L J. 106

(ix) A dying declaration which has been recorded by the Magistrate in the proper manner, in the form of questions and answers, and in the words of the maker, stands on much higher footing than a dying declaration which depends upon oral testimony.

Khushal Rao Vs State of Bombay
A.I.R. 1958 S.C. 22 : 1958 Cri. L.J. 106

(x) Statement of the deceased when does not disclose the cause of his death is not admissible u/s 32 and 18 (c) of the Evidence Act.

Ratan Gond Vs The State of Bihar
A I.R 1959 S.C. 18 : 1959 Cri. L.J. 108

(xi) Where the deceased had died as a result of burns caused by the fire set to her clothes by the accused who had sprinkled kerosene oil on her and this is supported by her dying declaration against the correctness of which no cogent reasons had been given or suggested and a conviction based on such evidence is sustainable.

Tarachand Damu Sutar Vs State of Maharashtra
A I.R. 1962 S.C. 130 : 1962 (1) Cri. L J. 196

(xii) It is neither a rule of law nor of prudence that a dying declaration requires to be corroborated by other evidence before a conviction can be based thereon. Like any other evidence given in court, dying declaration is to be considered by the judge.

Tarachand Damu Sutar Vs State of Maharashtra
A.I.R. 1962 S.C. 130 : 1962 (1) Cri L J. 196

(xiii) The court must be satisfied that the declaration is truthful where the court finds that the declaration is not wholly reliable, and material and integral portion

(Dying Declaration-contd)

of the deceased's version of the occurence is untrue, the court may consider it unsafe to convict the accused on the basis of the declaration alone without further corroboration.

Note —Dying declaration was ignored.

Thurukanori Pompiah Vs State of Mysore
A.I.R. 1965 S C. 939 : 1965 (2) Cri L.J. 31

"E"

Earlier Statement of Witness.

(i) The practice of the court is to contradict a witness with the earlier statement and parts thereof after declaring him hostile and then to use the record of the earlier statement as substantive evidence. It may be stated that it is highly desirable that the court should, before the transfer of the earlier statement to the record of the Sessions' case Under S 288, CrPC, indicate in a brief orderwhy the earlier deposition was being transferred to the record of the trial. This will make it quite clear to the accused that the earlier statement is likely to be used as substantive evidence against him.

But in this case Session Judge informed the accused about his eaalier statement and asked certain questions about it.

Therefore, although the technical requirement of the section, namely, that an order should be passed to indicate that the statement is transferred so as to be read as substantive evidence, wasn ot complied with, there does not appear to be any substantial departure from the requirements of the law. There is also no likelihood of any prejudice to appellant since he was informed, while he was being examined that the statement was being used under S. 288, Criminal Procedure Code, and was invited to say what he wished to say iu defence.

Held·—The High Court and Court below were right in using the statement as substantive evidence against the accused.

Periyasami Vs State of Madras Appellante 1967 Cri.L J. 975
A.I R 1967 S C. 1027 (July Part)

Early Stage Defence.

The very fact that the defence was given out at such an early stage and that it has, to such an extent, been corroborated is a strong reason for thinking that the defence was very likely to have been true.

Bhagat Ram V State of Punjab
A.I. S.C. 621 4 Cri.L.J. 1645

Effect.

(i) The legal effect of conviction U/S 302 read with 149 or 302 IPC read with Section 34 is that he must be deemed to have committed the murder as much as the actual murder has.

Mahabir Gope Vs State of Bihar
A.I R. 1963 S C. 118 : 1963 (1) Cri.L.J. 86

(ii) Where the High court acquitted three out of four and convicted fourth accused U/S 302 read with 34 IPC on the ground that he had committed offence along with others.

Held that the conviction of the fourth accused was clearly wrong. The effect of acquittal of the three accused was that they did not conjointly act with the fourth accused in committing the murder.

Krishna Govind Patil Vs State of Maharashtra
A.I R. 1963 S.C. 1413 : 1963 (2) Cri.L.J. 351

Effect of Composition

(iii) To have the effect of an acquittal the offence compounded must be one specified either under sub-s. (1) or sub-s. (2) of S. 345 of CrPC The principle behind the scheme seems to be that wrongs of certain classes which effect mainly a person in his individual capacity or character may be sufficiently redressed by composition with or without the leave of the Court as the case may be but any such composition would have the effect of an acquittal

If a person is charged with an offence, then unless there is some provision for composition of it the law must take its course and the charge enquired into resulting either in conviction or acquittal. If composition of an offence was permissible under the law the effect of such composition would depend on what the law provided for. If the effect of composition is to amount to an acquittal then it may be said that no stigma should attach to the character of the person, but unless that is expressly provided for, the mere rendering of compensation would not amount to the vindication of the character of the person charged with the offence

The effect of S. 62 of the Assam Forest Regulation was not the same as that of S. 345 (6) of the Criminal Procedure Code and the moral turpitude was involved

Note :—Appeal of the department i.e. the Board of Revenue was allowed and Board was declared justified in taking departmental steps inspite of acquittal based on composition.

Biswahan Das Vs Gohen Chandra Hayrika
A.I.R. 1967 S.C. 895 : 1967 Cri. L.J. 828

Electricity Act

The exposure of the stud hole permits the insertion of foreign material inside the meter retarding the rotation of the inside disc, and is thus an artificial means for preventing the meter from duly registering the energy supplied. For purposes of Section 44, the existence of such an artificial means raises the presumption that the consumer, in whose custody or control the m'ter is wilfully and knowingly prevented the meter from duly registering. To raise this presumption, it is not necessary to prove also that the consumer was responsible for the artificial means or that the meter was actually prevented from duly registering. The appellants did not rebut the presumption, and were rightly convicted under Section 44 of the Act.

Jagannath Singh Vs B S. Ramaswamy
A.I R 1966 S.C. 849 : 1966 Cri. L J. 697

(ii) Whoever abstracts or consumes or uses electrical energy dishonestly commits a statutory theft.

A.I R. 1966 S.C. 849 : 1966 Cri. L.J. 697

(iii) If appellant becomes co-owner by reason of the purchase of the mill, even though he may not be entered as such, must be regarded as consumer. So is liable u/s 44 (c) and R. 138 read with R. 36 of the Electricity Act (1910).

Ram Chandra Prasad Vs State of Bihar
A I.R. 1967 S.C 349 : 1967 Cri. L.J. 409

(iv) The installation of the meter in a dark corner does not show any guilty conscience of the appellant. In fact when the meter was installed by the electrice company it could have chosen a better lighted place. The presen ce of th obstruction in the passage is not sufficient to show that the servants of the company could not have reached the meter for the purpose of inspection and checking whenever they chose to do so. There appears to be no statement on the record to the effect that at any time such servants were thwarted in their attempt to check the meter by the appellant or his representatives, or on account of the alleged obstruction in the passage.

Jagannath Singh Vs H. Krishana Murthy and others
A.I.R. 1967 S.C. 947 : 1967 Cri. L J. 832
1967 S C. J. 474

Emergency

(i) The fact that emergency may last for a long period and as a consequence citizens may be percluded during the period of order has no bearing.

Makhan Singh Vs The State of Punjab
A.I.R. 1964 S.C. 381 : 1964 (1) Cri L.J. 269

(*Emergency-contd*)

(ii) During the pendency of the Presidential Order the validity of the Ordinance or any rule or order made thereunder cannot be questioned on the ground that it contravenes Arts. 14, 21 and 22. But this limitation cannot preclude a citizen from challenging the validity of the Ordinance or any rule or order made thereunder on any other ground. If a citizen seeks to challenge the validity of it on any ground other than the contravention of Arts. 14 ,21 and 22, the Presidential Order cannot come into operation. It is not also open to the appellant to challenge the Order on the ground of contravention of Art. 19, because as soon as a Proclamation of Emergency is issued by the President under Art. 358, the provisions of Art. 19 are automatically suspended But the appellant can challenge the validity of the order on a ground other than those covered by Art. 358, or the Presidential Order issued under Art. 359 (1). Such a challenge is outside the purview of the Presidential Order.

Jai Chend Lal Sethi Vs
State of West Bengal
A I.R. 1967 S.C. 483 (April Part) : 1967 Cri. L.J. 414, 1967 S.C.D. 84

(iii) Article 352 of the Constitution does not require the condition precedent for the exercise of the power, i.e, the President's satisfaction, to be stated in the declaration. The declaration should show that the President is satisfied about the existence of emergency.

P.L. Lakhanpal Vs Union of India
A.I.R. 1967 S.C. 243 (245) ; 1967 Cri. L.J. 279

Employed

The word employed in the section 6 of the Prevention of Corruption Act means permanently employed.

R.R. Chair Vs State of Uttar Pradesh
A.I.R. 1962 S.C. 1573 : 1962 (2) Cri L.J. 510

Endorsement

(i) The Magistrate is not obliged in complaint for offences not specified in part A of the Fifth Schedule to make an endorsement in process in terms of section 130 (1) (b) of Motor Vehical Act. He has the option to issue a summon with an endorsmet in terms of sub section (1) (a) or of sub section 1 (b) and only if a summons is issued with the endorsement specified by sub section (1) (b) it is open to the accused to avail himself of the option to plead guilty and to claim the privilege mentioned in sub section (3).

Puran Singh Vs The State of Madhya Pradesh
A.I.R. 1965 S.C. 1583

(ii) Where in a complaint under section 124 and 112 of the Motor Vehicle act the

magistrate issued process against person complained of for their appearance in court by pleader, but did not make any endorsement thereon in terms of of section 130 (i) (b) of Motor Vehical Act, the summon was not against law.

Puran Singh Vs State of Madhya Praeesh
A.I.R. 1965 S.C. 1583

English Cases

Supreme court is not bound by dicta authority of English Casses.

Ebrahim Vazir Mayat Vs The State of Bombay
A.I R. 1954 S.C. 229 : 1954 Cri. L.J. 712

English Courts

The decisions of English Courts are merely of pursuasive authority, decision of such a court even if at variance with one of the Supreme Court, do not by themselves justify an application to reconsider an earlier decision of the Supreme Court.

Mani Pur Administration Vs Thokchom Bira Singh
A.I.R. 1965 S.C. 87 : 1965 (1) Cri. L J. 120

English Decision

Our Act, the Sea Custom Act of 1878, was modelled on the English Customs Consolidation Act, 1876. Decision of English Court therefore with respect to corresponding provisions of the English Act would be helpful in the matter of the interpretation of Section 167 (81). Section 186 of the English Act corresponds to many of the provisions contained in Section 167 of the Act.

Sachidamanda Banerji, Assistant Collector of Customs Calcutta Vs Sitaram Aggarwal and another.
A.I.R. 1966 S.C. 955 : 1966 Cri L J. 712

English Practice

The analogy of the English practice would be misleading as an aid to the construction of Section 494 Cr P. C. The scheme of our criminal procedure Code is substantially different from that of English Code.

The State of Bihar Vs Ram Naresh Pandey
A.I.R. 1957 S C. 389 : 1957 Cri. L.J. 567

Enhance

(i) The power to enhance a sentence from transporation to death should very rarely be exercised and only for the strongest possible reasons. It is not enough for an appellate court to say, or think, that if left to itself it would have awarded the greater penalty because the discretion does not belong to the appellate court but to the trial Judge and the only ground on which an

(*Enhance-contd*)

appellate court can interfere is that the discretion has been improperly exercised, as for example, where no reasons are given and none can be inferred from the circumstances of the case, or where the facts are so gross that no normal judicial mind would have awarded the lesser penalty.

Dalip Singh Vs State of Punjab
A.I.R. 1953 S.C. 364 : 1953 Cri. L J. 465

(ii) The fact, that the trial of the case was entrusted to a court with a limited jurisdiction in the matter of sentence cannot be used to impose a limit on the power of High Court to impose a proper and adequate sentence and the power of enhancing the sentence.

Note :—In this case Assistant Session Judge convicted and sentenced to 5 years R.I- while the High Court enhanced the sentence to 10 years R.I. The sentence was upheld. The appeal was dismissed.

Sarjug Rai Vs State of Bihar
A.I.R. 1958 S C. 127 : 1958 Cri. L J. 268

(iii) In the matter of enhancement there should not be interference when the sentence passed imposes substantial punishment. Interference is only called for when it is manifestly inadequate.

Bed Raj Vs State of Uttar Pradesh
A I.R. 1955 S.C. 778 : 1955 Cri. L.J. 1642

(iv) High Court enhances the sentence by awarding sentence for the charge, on which the lower court has not passed the sentence. In the circumstances the order of the High Court could not be held to be bad for want of notice u/s 39 (2) of Criminal Procedure Code.

Jaryaram Vithoba Vs The State of Bombay
A.I.R. 1956 S.C. 146 : 1956 Cri. L J. 318

(v) The sentence imposed by the trial court should not be lightly interfered with and should not be enhanced unless the appellate court comes to the conclusion on the entire evidence that the sentence is inadequate.

Sarjug Rai Vs State of Bihar
A I.R. 1958 S C. 127 : 1958 Cri. L J. 268

Enquiry

(i) It is open to a magistrate to hold an enquiry from the begining under Chapter XVIII in a case not exclusively triable by the court of Session but the Magistrate must inform the accused and if he fails to do so, the accused can reasonably conclude that a trial is being held.

Chhadamilal Vs State of Vttar Pradesh
A.I.R. 1960 S.C. 41 : 1960 Cri. L.J. 145

(*Enquiry-contd*)

(ii) Under section 203 of Cr. P. C. the judgement which the Magistrate has to form must be based on the statements of the witnesses, and of the complainant and the result of the investigation or enquiry if any. He must apply his mind to the materials and form his judgment whether or not there is sufficient ground for proceedings If the magistrate has acted like it then it cannot be said that he has acted erroneously.

Pramatha Nath Vs Saroj Ranjan Sarkar
A I.R. 1962 S.C, 876

(iii) The scope of enquiry u/s 202 of Cr. P. C. is limited to finding out truth or otherwise of the complaint in order to determine whether process should be issued or not.

Pramatha Nath Vs Saroj Ranjan Sarkar
A.I.R. 1962 S.C. 876

(iv) The magistrate after taking cognizance could order investigation by the police only u/s 202 and not under section 156 (3) of Cr P. C.

Jamuna Singh Vs Bhadai Shah
A.I.R. 1964 S.C. 1541 : 1964 (2) Cri. L.J. 468

Entertain

Article 136 of the Constitution confers a wide discretionary power on the Supreme Court to entertain appeals in suitable cases not otherwise provided for by the Constitution.

Sanwant Singh Vs State of Rajasthan
A.I.R. 1961 S C 715 . 1961 (i) Cri. L.J. 766

Entries

(i) In order to sustain the conviction u/s 218 I P.C. it is not sufficient to establish that the entries are incorrect, but it is essential that the entries should have been made with the intention mentioned in Section 218 Penal Code, where direct evidence proving the necessary intention is lacking and circumstantial evidence is too meagre to support the conviction. The accused should be acquitted.

Raghubansh Lal Vs The State of Uttar Pradesh
A.I.R. 1957 S.C. 486 : 1957 Cri. L J. 595

(ii) S. 34 of the Indian Evidence Act appears in a group of sections. Headed- "Statement made under special circumstances".
This Section makes entries in book of accounts regularly kept in the course of business relevant in all proceedings in a court of law These entries are,

(*Entertain-contd*)

however, not by themselves sufficient to charge any person with liability. Entry in A's accounts book are certain payments made to B Absence of corresponding entry in B s account book regarding receipt of such payment; non-existence of such entry though not relevant under Section 33 is relevant under section 5 and 11 of Evidence Act and can be proved by B's account book.

The State of Andhra Pradesh Vs Cheemalapati Ganeswara Rao
A.I.R. 1963 S.C. 1850 : 1963 (2) Cri. L.J. 671

Entrustment

(i) The first act referred in S. 52 in the Post Office Act is theft Surely it cannot be contended that any entrustment is necessary with regard to that act. If entrustment were proved and the article entrusted is not found to have been disposed of in the manner permissible under the act, the offence committed would be not theft but criminal breach of trust.

Note :—In this case the appellant was acquitted as the prosecution failed to prove that the letters recovered were in the **exclusive possession** of the appellant.

Radha Kishan Vs State of Uttar Pradesh
A.I.R. 1963 S.C. 822 · 1963 (1) Cri. L J. 809

(ii) Before a person can be said to have committed criminal breach of trust within the meaning of section 405 I. P. C. it must be established that he was either entrusted with or entrusted with dominion over property which he is said to have converted to his own use. In order to establish, 'entrustment of dominion' over property to an accusend person the mere existence of that person's dominion over property is not enough. It must be further shown that his dominion was the result of entrustment.

Velji Raghvji Patel Vs The State of Maharashtra
A.I R. 1965 S.C. 1433 : 1965 (2) Cri. L.J. 431

Estimate of Evidence

On an appeal against acquittal the High Court is entitled to go into the facts and arrive at its own estimate of evidence.

S.A A Biyabani Vs The State of Madras
A.I R. 1954 S C. 645 : 1954 Cri. L J. 1665

Estoppel

The rule of estoppel is not the same as the plea of double jeopardy or autref is acquit The rule does not introduce any variation in the code of Criminal Procedure either in investigation, enquiry or trial. It does not pre-

(*Estoppel-contd*)

vent the trial of any offence as does autrefois acquit but **only precludes evidence being led to prove a fact in issue as regards which evidence has already been led** and a specific finding recorded at an earlier criminal trial before a court of competent jurisdiction.

Mani Pur Administration Vs Thokchom Bira Singh
A.I R. 1965 S.C. 87 : 1965 (1) Cri L J 120 (Jan Part)

Evidence

(i) Omission to certify understanding, duty to speak truth is mere irregularity which cannot effect the admissiblity of the evidence of the minor witness It is, however, desirable that Judges and magistrate should record their opinion that the child understands that duty of speaking the truth, otherwise the credibility of the witness can be seriously effected so much so in some cases it may necessary to reject the evidence altogether. (The evidence of the minor girl was relied upon.)

Rameshwar Vs State of Rajasthan
A I.R. 1952 S C. 54 : 1952 Cri. L J. 547

(ii) It would be proper not to rely upon the oral evidence implicating particular accused unless there is some circumstantial evidence to support it This corroboration is required as a matter of prudence and caution but it is not that kind corroboration which is required in the case of an approver or an accomplice, but corroboration by some circumstances which would lend assurance to the evidence before them (the judges) and satisfy them that particular accused persons were really concerned in the murder of the accused, is required.

Note :—In this case the corroborative circumstances were found. So the appeal was dismissed.

Lachhman Singl Vs The State
A.I.R. 1952 S.C. 167 . 1952 Cri L J. 863

(iii) Magistrate is not justified in basing conviction merely on the statement of the accused recorded U/s 342 Cr P C. and treating the same as evidence, as the statement recorded u/s Cr 342 P C. is not evidence.

Vijendrajit Ayodhya Prasad Goel Vs State of Bombay
A I.R. 1953 S C. 247 : 1953 Cri L J 1097

(iv) No body will create advance evidence against himself.

Tulsiram Kanu Vs The State
A I R. 1954 S.C. 1 : 1954 Cri. L.J. 225

(v) The confessional statement of the co-accused are not evidence as defined in

(*Evidence-contd*)

section 3 and no conviction can be found thereon, but that if there was other evidence on which a conviction can be based, they can be referred to as leading assurance to that conclusion and for fortifying it :—AIR 1952 S.C. 159. Kashmira Singh Vs. State of M.P. was approved.

Nathu Vs The State of Uttarr Pradsh
A.I.R 1956 S.C. 56 : 1956 Cri. L.J. 152

(vi) A statement in the inquest report is not evidence by itself and it certainly cannot be pitted against the evidence of the medical witness in court.

Sujon Vs State of Rajasthan
A.I.R. 1956 S.C. 425 : 1956 Cri L.J 815

(vii) Evidence of the draftsman who prepared the map of the place of occurrence and after ascertaining from the witnesses where exactly the assailants and the victim stood at the time of the commission of the offence. The draftsman measure the distances and put down on the plan, so his evidence is legal and admissible.

Santa Singh Vs State of Punjab
A.I.R. 1956 S.C. 526 : 1956 Cri. L.J. 930

(viii) It is incumbent on the High Court when the reference is heard by it to consider the entire evidence and come to its own conclusion, where the High Court only considered the arguments in regard to the defect in charge and did not consider the evidence which was on record, the High Court clearly violated the Provisions of S. 307 (3) of Criminal Procedure Code. The case was remanded to the High Court for the consideration of evidence.

Ramyed Rai Vs State of Bihar
A.I.R. 1957 S.C. 373 : 1957 Cri. L.J. 557

(ix) The prosecution is not bound to call all witnesses who may have seen the occurrence and so duplicate the evidence. But apart from this, the prosecution should call all material witnesses.

Narain Vs State of Punjab
A.I.R. 1959 S.C. 484 : 1959 Cri. L.J. 537

(x) If a material witness has been deliberately or unfairly kept back, then a serious reflection is cast on the propriety of the trial itself, and the validity of the conviction resulting from it may be open to challenge. In this case the evidence of Raghbir (non-produced) witness was not considered essential.

Note :—But See—1954 S.C 51.

Narain Vs State of Punjab
A.I.R. 1959 S.C. 484 (487) : 1959 Cri. L.J. 537

(*Evidence-contd*)

(xi) There is no warrant for the proposition that where the law provides that in certain circumstances a presumption shall be made against the accused, the prosecution is barred from adducing evidence in support of its case if it wants to rely on the presumption.

Sajjan Singh Vs State of Punjab
A.I.R. 1964 S.C. 464 : 1964 (1) Cri. L.J. 310

(xii) Though confession may be regarded as evidence in that generic sense because of the provisions of 30 of the Evidence Act, the fact remains that it is not evidence as defined by section 3 of the Act. It is of course, permissible to turn to the confession in order to receive assurance to the conclusion of guilt which the judicial mind is about to reach on the basis of other evidence.

Note :—In this case the appeal was allowed as the confession was not corroborated byany independent evidence.

Haricharan Kurmi Vs State of Bihar
A.I.R. 1964 S.C. 1184 : 1964 (2) Cri. L J. 344

(xiii) **Question regarding age of the girl**-There were two certified copies from school registers which showed the age of girl under 18 years and the affidavit of father about her age, stating the date of the birth and the statement of girl to the police with regard to her own age. These amounted to evidence under the Evidence Act.

Mohd. Ikram Hussin Vs The State of Uttar Pradesh
A.I.R. 1964 S.C. 1625 : 1964 (2) Cri. L.J. 590

(xiv) The character evidence is very weak evidence, it cannot outweigh the positive evidence in regard to the guilt of a person It may be useful in doubtful cases to tilt the balance in favour of the accused

Bhagwan Swaup Vs State of Maharashtra
A.I.R 1965 S.C. 682 : 1965 (1) Cri. L.J. 608

Exact Word

Unless one is certain about the exact words uttered by the deceased, no reliance should be placed on verbal statements of witnesses and the oral declarations made by a deceased.

Note . Dying declaration was ignored. Appeal was accepted.

Ram Nath Vs State of Madhya Pradesh
A.I.R. 1953 S C 420 . 1953 Cri. L J. 1772

Examination Of Accused

(i) Examination of accused U/s 342 Cr. P.C is defective Even when an accused person is not illiterate, his mind is apt to be perturbed when he is facing the charge of murder. Accused is, therefore, in no fit position to understand the significance of a complex question. Fairness requires that each material

(Examination of Accused-contd)

circumstance should be put simply and separately in a way that an illiterate mind or one which is perturbed, can readily understand.

Every error or omission does not the vitiate trial as it is an irregularity which is curable But when prejudice has been caused then it shall vitiate the proceedings.

Note I :—The irregularity was considered a gross and there was grave likelihood of prejudice

Note II :—Conviction was set aside, case was remanded to the trial court for de-*novo* trial.

Tara Singh Vs The State
A.I.R 1951 S C 441 · 52 Cri. L. J. 1491

(ii) It is not sufficient for the accused merely to show that he has not been fully examined as required by section 342 Cr. P C but he must also show that such examination has materially prejudiced him.

Note :—Appeal was dismissed

Bejoy Chand Patra Vs State of West Bengal
A.I R 1952 S.C. 105 · 1952 Cri L J. 644

(iii) It is not sufficent compliance of S 342 Cr. P C. to generally ask the accused that having heard the prosecution evidence what he has to say about it. He must be questioned separately about each material circumstance which is intended to be used against him The whole object of the section is to afford the accused a fair and proper opportunity of explaining circumstances which appear against him and so the question must be fair and must be coached in a form which an ignorant or illiterate person will be able to appreciate and understand (Case was remanded for retrial because of defective examination.)

Ajmer Singh Vs State of Punjab
A.I R. 1953 S.C. 76 · 1953 Cri L.J. 521

(iv) It is well settled that every error or omission not in compliance with the provisions of section 342 Cr. P C. does not necessarily vitiates the trial Error which vitiates the trial depends upon degree. (Case was remanded for retrial because of defective examination)·

Ajmer Singh Vs State of Punjab
A I R. 1953 S.C 76 : 1953 Cri L J. 521

(v) Accused admitted u/s 342 Cr P.C. to be the incharge of the godown but denied that the rectified spirit was found in the godown and alleged that it was found outside the godown This part of his statement was proved untrue by prosecution evidence and had no intimate connection with the statement con-

(*Examination of Accused-contd*)

cerning the possession of godown The magistrate was justified in using the statement of the accused concerning the possession of the godown ,

Note -—appeal of the accused was dismissed.

Vijendrajit Ayodhya Prasad Goel Vs State of Bombay
A I.R 1953 S C. 247 1953 Cri. L.J. 1097

(vi) The objection of the defective examination of the accused was not raised in the grounds of appeal to the High court, nor does it find place in the grounds of appeal or in the statement of appeal filed in S court So the defective examination has not caused prejudice to the accused.

Ajmer Singh Vs State of Punjab
A I.R 1952 S C 105 : 1952 Cri. L J. 644

(vii) Conviction of the accused cannot be based merely on his statement as the same cannot be regarded as evidence. Courts cannot use the statement of the accused u/s 342 Cr P C for the purposes of finding the facts.

Note·—In this case the conviction was not based merely on the statement of the accused. So the appeal of the accused was dismissed

Vijendrajit Ayodha Prasad Vs State of Bombay
A.I.R. 1953 S C 247 . 1953 Cri L J 1097

(viii Circumstance such as delay was not put to the accused nor was opportunity given to the accused for explaining the same cannot be regarded as incriminating circum-stance.

Note .—delay for not submitting the report on the part of the accused was one of the ground of conviction which was ignored because of defective examination n/s 342 Cr. PC.

Zwinglee Ariel Vs State of Madhya Pradesh
A.I.R 1954 S.C. 15 : 1954 Cri. L.J. 230

(ix) Lack of reference to the matters in question in the examination of the accused u/s 342 Cr. P. C., is a serious irregularity and cannot be lightly ignored. If prejudice was thereby caused, such an irregularity would entail retrial in the circumstances of a case like this. But before a retrial can be ordered the court must be clearly satisfied about prejudice having been caused

Note .—No prejudice found So, no. retrial was ordered
But in 1954, S.C 692 1954 Cri. L J. 1472, Prejudice was found

Kedar Nath Vs State of West Bengal
A I R. 1954 S C. 660 1954 Cri L J. 1679

(x) I. Judges and magistrates must realise the importance of the examination under S 342, Criminal P. C and this court has repeatedly warned them of the consequences that might ensue in certain cases The appellant was arrested in December 1950 and has been on his trial one way and another ever since, that is to say, for over 4-1/2 years.

(*Examination of Accused-contd*)

Supreme Court is not prepared to keep persons who are on trial for their lives under indefinite suspense because trial judges omit to do their duty. Justice is not one-sided.

II Confession of the accused cannot be used against him unless it is put to the accused in his examination u/s 342 Cr. P. C.

Note:—Keeping in view the delay in the trial the appeal was allowed and conviction was set aside.

Machander Vs State of Hyderabad
A.I.R. 1955 S.C. 792 1955 Cri. L.J. 1644

(xi) It is not ordinarily necessary to put the evidence of each individual witness to the accused in his examination U/s 342 of Cr. P.C. where the accused was put the question "Have you got anything to say on the evidence of the witness"

Held .—It is sufficient in the circumstances of this case to show that the attention of the accused was called to the prosecution evidence.

Bimladhar Pradhan Vs State of Orissa
A I.R. 1956 S.C. 469 : 1956 Cri L.J. 831

(xii) A judgment is not to be set aside merely by reason of inadequate compliance with section 342 Cr.P.C. clear prejudice must be shown.

Moseb Kaka Chowdlry Vs State of West Bangal
A I.R. 1956 S.C. 536 : 1956 Cri. L.J. 940

(xiii) The compliance with the provisions of section 342 Cr. P.C. is not a mere idle formality. But even where the examination of the accused to enable him to explain the circumstances appearing against him is neither full nor very satisfactory, will not vitiate the whole trial if no serious prejudice has been caused to the accused.

Chikharange Gowda Vs State of Mysore
A.I R 1956 S.C. 731 : 1956 Cri. L J. 1365

(xiv) Where each accused was in a position to know just what was charged against him because once the facts are ennummerated the law that applies to them can easily be ascertained.

Omission to take the objection in the grounds of appeal is not necessarily fatal. Every-thing depends on the facts of each case. The fact, that objection was not taken at an earliest stage when the accused was being represented by a lawyer will weigh heavily against the accused.

Note :—This objection was over-ruled but the appeal on other grounds was allowed.

K C. Mathew Vs State of Travancore-Cochin
A.I.R. 1956 S.C. 241 . 1956 Cri. L.J. 44

(Examination of accused-contd)

(xv) Even if there was any defect in the examination of the accused U/s 342 Cr. P.C. the defect amounted merely to an irregularity and is not such to call for interference.

C.T. Munappan Vs State of Madras
A.I.R. 1961 S.C. 175 : 1961 (1) Cri. L.J. 315

(xvi) The examination of the accused made by the Sessions Judge may be perfunctory every error or omission in complying with section 342 Cr. P.C. does not vitiate-trial. Errors of this type fall within the category of curable irregularities. So mere irregularity without the accused has been prejudiced, cannot justify the order of retrial.

Rama Shankas Singh Vs State of West Bengal
A.I,R. 1962 S.C. 1239 . 1962 (2) Cri. L.J. 296

(xvii) Under Sub-Section 3 of Section 342 Cr. P.C. the answer given by the accused may be taken into consideration in enquiry or trial.

Note :—On the basis of explanation of the accused in his examination, the acquittal was upheld.

State of Maharashtra Vs Laxman Jairan
A.I.R 1962 S.C. 1204 : 1962 (2) Cri L.J. 284

(xviii) The court is not bound to ask from the accused to explain any inference that a court may be asked to draw or proposed to draw from the evidence on record

R.K. Dalmia Vs The Delhi Administration
A.I.R. 1962 S.C. 1821 . 1962 (2) Cri. L.J. 805

(xix) No question to the accused can be put regarding a matter when there is no evidence about it.

R.K. Dalmia Vs The Delhi Administration
A.I.R 1962 S C. 1821 . 1962 (2) Cri. L.J. 805

(xx) The objection that due to the non-compliance of the provisions of section 342 Cr. P C. the accused had suffered, cannot be raised for the first time in the Supreme Court.

Radha Kishan Vs State of Uttar Pradesh
A I.R: 1963 S.C. 822 : 1963 (2) Cri. L J. 809

(xxi) The court must take care to put all relevant circumstances appearing in the evidence to the accused. It would not be enough to put a few general and broad questions to the accused, for by such a course the accused may not get opportunity of explaining all the relevant circumstances. Court should not put to the accused questions which may amount to his cross-examination.

Held :—further that the failure to put the specific point of distance is not very material. So this objection could not help the accused.

Jai Dev Vs State of Punjab
A I R. 1963 S C. 612 : 1963 (1) Cri.L.J. 495

(xxii) There is no substance in the contention that the legislature could not have intended that the accused should be examined in respect of documents which

(*Examination of accused-contd*)

are not duly proved before the court, because to do so might in some cases operate, as "a trap for the accused".

Magistrate has the powers, if he thinks it necessary, to examine the accused for the purposes of enabling him to explain any circumstance appearing in the evidence, such evidence being oral evidence, if any, as may have been recorded, and the documents refered to S. 173 (4) of Criminal Procedure Code.

Rammarayan Mor Vs State of Maharashtra
A.I.R. 1964 S.C. 949

(xxiii) Where the question embraces number of matters, it would have been better if those matters had been made the subjects of separate questions, but the answers given by the respondents clearly show that they understood the questions and where ever posible they have given complete answers to those questions. That is to say, they have given their explanation regarding the circumstances appearing in the evidence set out in the questions and where ever that was not feasible they have said that they would do so in their written statements. In fact, written statements have been filed by each of them in which every point left over has been fully answered. So in these circumstances faulty examination does not vitiate trial.

The State of Andra Pradesh Vs Cheemalapati
A I.R. 1963 S.C. 1850 : 1963 (2) Cri. L J. 671

(xxiv) It was not at all necessary that each separate piece of evidence in support of a circumstance should be put to the accused and he should be questioned in respect of it under that section.

Bakshish Singh Dhaliwal Vs The State of Punjab
A.I.R. 1967 S.C. 752 (May Part) 1967 Cri L.J. 656

Examination of Magistrate

(i) The prosecution was criticised for not calling the Magistrate who recorded the confession as a witness.

Held :—The Magistrate was rightly not called and it would have been improper and undesirable for the prosecution to have summoned Magistrate as a witness.

Note :—Privy Counsel in 1936 P.C. 253 (2) was approved in this case.

(ii) Magistrate and Judges should be summoned only in exceptional circumstances such as provided in S. 533 Cr. P. C.

Kashmira Singh Vs State of Madhya Pradesh
A I.R. 1952 S.C. 159

Examiner's Report

In ordinary circumstances there would be nothing wrong in taking the reports of chemical examiner and imperial Serologist on record without examining these persons as witness, as permitted by criminal Procedure Code. When, however, there is a difference of opinion in the reports, the duty to explain the difference is on the prosecution and the mere production of the report does not, under the circumstances, prove anything which can weigh against the appellant.

Note :—The reports of the examiner were held to be unreliable and were ignored, and appeal was accepted.

Tulsiram Kanu Vs The State
A.I.R. 1954 S.C. 1 : 1954 Cri. L.J. 225

Exception-Sudden Fight

Hariram and his father, Gayaram, were sitting in the verandah of one Thandaram, the latter proposed to Prandas who was in his own verandah (opposite to that of Thandaram) that the dispute between him and Gayaram should be settled amicably by Panchayat. While this proposal was being discussed, an altercation ensued, and Prandas proceeded with a lathi to the place where Gayaram was standing and inflicted on him several blows. The first blow was warded off by Gayaram with his right hand; but the next two blows fell on his head and he fell down. Thereafter, some of the relations of Prandas beat Hariram and his father Gayaram, and Tiharu, cousin of Gayaram, Prandas struck Bahartin, wife of Gayaram, Hariram then retaliated by striking Prandas on the head.

According to medical evidence, Prandas had sustained 6 injuries in the course of the occurrence including the fracture of a bone and an injury on the head and the High Court has not expressly reversed the finding of the Sessions Judge that these injuries were not sustained after Gayaram and his companions had been assaulted. The High Court has also not expressed its disagreement with the finding of the Sessions Judge that Gayaram was not assaulted after he fell on the ground As will appear from the judgment of the Sessions Judge, several discrepant statements were made by the witnesses as to the number of blows said to have been dealt by Prandas, and Agardas speaks of one blow only. In these circumstances, it seems to us that the view of the High Court that the appellant is not entitled to the benefit of exception 4 to S. 300, Penal Code cannot be sustained, and that being so, the conviction under S. 302 cannot stand.

Note :—Appellant was convicted u/s 304 IPC and was sentenced to 5 yrs R.I.

Prandas Vs The State
A.I..R. 1954 S.C. 36 : 1954 Cri. L.J. 331

Exception

(i) There were severe exchange of abuses between the parties proceeding the incident, that during the abuse the tempo rose and both the parties came out of their respective houses in anger and in the course of quarrel the accused gave the fatal blow on the head of the deceased with his lathi.

Held —though the circumstanees were such as not to bring the case within exception 1 to section 300 of I.P.C. the crime was committed wit out premediation in a sudden fight in the heat of passion upon a sudden quarrel and without taking undue advantage thus brings the case within exception 4, with the result the offence was committed was culpable homicide not amounting to murder.

Moti Dass Vs State of Bihar
A.I.R. 1954 S.C 657 : 1954 Cri. L.J. 1676

(ii) It is impossible to say that there is no undue advantage when a man stabs the unarmed person who makes no threatening gestures and merely askes the accused's opponent to stop fighting. The fight must be with the person who is killed. Here the fight was between victim and the accused. The exception, 4 to S.300 therefore, does not apply.

Note :—The knife was drawn from waist. So there was no pre-mediation therefore sentence u/s 302 IPC. was reduced to one of transportation.

Narayanan Nair Vs State of Travancore Cochin
A.I.R. 1956 S;C. 99 : 1956 Cri. L.J. 278

(iii) In India, if an accused pleads an exception within the meaning of section 80 of the Penal Code, there is a presumption against him and the burden to rebut the presumption lies on him.

K.M. Nanavati Vs The State of Maharashtra
A.I.R. 1962 S.C. 605 : 1962 (2) Cri. L.J. 521

(iv) Sub section 2 of section 222 Cr. P.C. is an exception to meet certain contingency and is not the normal rule with respect to framing of a charge in cases of criminal breach of trust. It is only when it may not be possible to specify exactly particular items with respect to which criminal breach of trust took place or the exact date on which the individual items were misappropriated or in some similar contigency, that the court is authorised to lump up the various items and to mention the total amount misappropriated within a year in the charge.

Ranchhod Lal Vs State of Madhya Pradesh
A I R 1965 S.C. 1248 : 1965 (2) Crt. L J 253 (Aug Part)

(v) Whether an Act which amounts to an offence is trival and comes under the exception i.e. u/s 95 of IPC would undoubtedly depend upon the nature of injury, the position of the parties the knowledge or intention with which the

(Exception-contd)

offending act is done, and other related circumstances. There can be no absolute standard or degree of harm which may be regarded as so slight that a person of ordinary sense and temper would not complain of the harm. It cannot be judged solely by the measure of physical or other injury that act causes.

Note :—In case 1966 S.C. 1773 harm was held to be so slight which does not warrant complaint u/s 323.

M/s. Veeda Menezes Vs Yusuf Khan Haji Ibrahim Khan
A.I.R. 1966 S.C. 1773 : 1966 Cri. L.J.1489

Exceptional grounds

Supreme court will not reason the evidence of identification in court unless exceptional grounds are established necessitating such a course.

Kanta Prashad Vs Delhi Administration
A.I.R 1958 S.C 350 1958 Cri L J. 698

Executive

The satisfaction of the authority which justified the use of the power under Rule 30 and confirmation of the order of detention are not subject to judicial review, for the order of detention without trial is pre-emi-nently an executive act The subjective detention of the detaining authority is a condition of the making of the order, and if that condition is shown to exist, the Courts have no power to enquire into the sufficiency of material on which the order is made or the propriety or expediency of making the order. It is the satisfaction of the prescribed authority which is determinative of the validity. That, however, does not exclude the Courts power to investigate into the compliance with the procedural safeguards imposed by the statute, or into the existence of prescribed conditions precedent to the exerise of power, or into a plea that the order was made mala fide or for a collateral purpose. That, however, is not judicial review of the order.

Sadhu Singh Vs Delhi Admn.
A.I.R. 1966 S.C. 91 (Page 94)

Executability

An order which was good and competent when it was made and which was passed by a tribunal which was domestic at the date of its making and which could, at that date, have been enforced in an Indian Court, does not lose its efficacy by reason of the partition of the country.

Note :—An order U/s 488 Cr. P.C passed in Lahore was held executable U/s 490 Cr. P C. in India after partition.

Kishori Lal Vs Smt. Shanti Devi
A.I.R. 1953 S.C. 441 : 1953 Cri. L.J. 1921

Exemption

(i) The burden of proof that the mental condition of the accused was, at the crucial point of such time, as is described by section 84 of Penal Code lies on the accused who claims the benefit of this exemption.

State af Madhya Pradash Vs Ahmadulla
A.I.R. 1961 S.C. 998

(ii) A persual of clause (b) of section 52 of Factories Act (1948) makes it abundantly clear that what is required to be thereunder, that is to say, to give and display a notice, is only for the purpose of securing an exemption from the prohibition contained in the opening parts of section 52 of the Act.

Johan Douglas Keith Brown Vs State of West Bengal
A.I.R 1965 S.C. 1341 : 1965 (2) Cri. L.J. 423

No general permission can be granted under cls, (a) and (b) of sub-s. (1) of S.52 for altering the day of the weekly holiday so as to cover all the workmen.

John Douglas Keith Brown Vs State of West Bengal
A I.R. 1965 S C 1341

Existing Law

Existing law is to prevail over the repealed law.

Fateh Mohd Vs The Delhi Administration
A.I.R. 1963 S.C. 1035 : 1963 (2) Cri. L.J. 55

Expert

(i) It is the duty of the prosecution in a case, where death is due to injuries or wound caused by a lethal weapon, to prove by expert evidence that it was likely or at least possible for the injuries to have been caused with the weapon with which and in the manner in which they are a leged to have been caused.

Note :—Non-production of proved fatel to the prosecution case. Appeal was allowed.

Mohinder Singh Vs The State
A I R. 1953 S.C. 415 . 1953 Cri. L J. 1761

(ii) That the fire arms expert made the necessary test and was careful in what he did. There is no reason for distrusting him The appeal was disallowed.

Note :—(Conviction was upheld on the sole evidence of the fire-arm expert). and the death sentence was confirmed.

Kalua Vs State of Uttar Pradesh
A.I R 1958 S.C. 180 : 1958 (2) Cri L J. 300

(iii) The High Court was in error in holding that consultation with Board of Expert under Section, 6 A (6) of the Bombay Prohibition Act was a condition precedent to the launching of prosecution under the Act

The Dargah Committee Ajmer Vs State of Rajasthan
A.I.R. 1962 S.C. 574 : 1962 (1) Cri. L.J. 507

(*Expert-contd*)

(iv) The rifles which the appellants are alleged to have been used have not been recovered and so, there was no occasion to examine any expert in respect of the injuries caused to he two victims by the appellants.

Jai Dev Vs State of Punjab
A.I.R. 1963 S.C 612 . 1963 (1) Cri. L.J. 495

Expert

(v) A writing may be proved to be in the handwriting of a particular individual by the evidence of a person familiar with the handwriting of that individual or by the testimony of an expert competent to the comparison of handwritings on a scientific basis. A third method (S.73) is comparison by the Court with writing made in the presence of the Court or admitted or proved to be the writing of the person.

Where an expert's opinion is given, the Court must see for itself and with the assistance of the expert then come to its own concluston whether it can safely be held that the two writings are by the same person. This is not to say that the Court must play the role of an expert but to say that the Court may accept the fact proved only when it had satisfied itself on its own observation that it is safe to accept the opinion whether of the expert or other witness.

Note :—The expert's evidence after comparing the writing by their Lordship's themselves was admitted.

The State of Madhya Pradesh
Versus
Pakhudd in......... Appellant
A.I.R. 1967 S.C. 1326 (Sept Part) : 1967 Cri L.J 1197

(vi) Except for a general statement contained in the evidence of the witnesses, particularly P. Ws. 1 and 4, that there was a strong smell of alcohol, emanating from the tins, which were pierced open, there is no other satisfactory evidence to establish that the article is one coming within the definition of the expression liquor" Merely trusting to the smelling sense of the Prohibition Officers, and basing a conviction, on an opinion expressed by those officers under the circumstances, cannot justify the conviction of the respondents. Better proof, by a technical person, who has considered the matter from a scientific point of view, is not only desirable, but even necessary to establish that the article seized is one coming within the definition of 'liquor',

State of Andhra Pradesh Vs Madiga Boosenna
A.I R. 1967 S.C. 1550 : 1367 Cri L J. 1398

Explanation

(i) Circumstance that the numbers of these notes being tallied and appellant's expla-

(*Explanation-contd*)

nation in that behalf being asked for by the police authorities the appellant No. 1, was confused **and could furnish no explanation in regard thereto, also supports this conclusion and there is no doubt left that the appellant No 1 was guilty of the offence** under Section 161 of the Indian Penal Code with which he was charged.

Rao Shiv Bahadur Singh Vs State of Vindh-P
A.I.R. 1954 S.C. 322 : 1954 Cri. L.J. 910

(ii) The ornaments established to be the ornaments worn by the deceased and the accused was not in a position to give any satisfactory explanation as to how he came to be in possession of the same on the very same day on which the alleged murder was committed. The circumstantial evidence therefore, was sufficient to hold the accused responsible for the murder of the deceased.

Sunder Lal Vs The State of Madhya Pradesh
A.I R. 1954 S.C. 28 : 1954 Cri. L.J. 257

(iii) The accused could not account for the possession of money and facts once were found to exist and the explanation of the accused was rejected as unsatisfactory, section 5 (3) of the prevention of Corruption Act was at once attracted and the Court was bound to presume that the accused was guilty u/s 5 (2) of the Act.

Bisvabhusan Naik Vs State of Orissa
1945 S,C. 359 : 1954 Cri. L J. 1002

(iv) When an accused person offers a reasonable explanation of his conduct, then even though he cannot prove his assertion, they should ordinarily be accepted unless the circumstances indicate that they are false.

Aher Raja Khuma Vs State of Sauashtra
A.I.R. 1956 S C. 217 : 1956 Cri. L J. 426

(v) Where the prosecution has not given the reasonable explanation of the motive of the injury it would be perverse to conclude that he did not intend to inflict the injurythat he did.

State of Uttar Pradesh Vs C. Tobit
A.I.R. 1958 S.C. 465 : 1958 Cri L J. 809

(vi) The accused's breath was smelling of liquor and that on examination of his blood it was found to contain O. 148% but the respondent gave an explanation showing that he had taken 6 ounces of Tincture. Doctor. also agreed that the consumption of 6 to 8 ounces of that substance will produce that amount of concentration of blood. This explanation was sufficient to acquit the accused.

State of Maharastra Vs Laxman Jairam
A.I.R. 1962 S.C. 1204 : 1962 (2) Cr. L.J. 284

(*Explanation-conted*)

(vii) The language of explanation 2 of S. 499 of Indian Penal Code is general and any collection of persons would be covered by it. Of course, that collection of persons must be identifiable in the sense that one could, with certainty, say that this group of particular people has been defamed, as distinguished from the rest of the community The prosecuting staff of Aligarh or, as a matter of fact, the prosecuting staff in the state of Uttar Pradesh, is certainly such an identifiable group or collection of persons. There is nothing indefinite about it.

Sahib Singh Vs State of Uttar Pradesh
A.I.R 1965 S.C. 1451 · 1965 (2) Cri. L.J. 434 (Sept. Part)

Express

If a Magistrate forms an opinion that no case exclusively triable by a court of Session is disclosed, but a less serious offence, which it is within the competence of Magistrate to try, is disclosed. This will amount to an implied discharge of that offence and the revisional power u/s 437 Cr P C. can be invoked although there is no express order of discharge.

Thakur Ram and others Vs State of Bihar
A I R. 1966 S.C 911 : 1966 Cri. L.J. 700

Expunge

(i) Every High Court as the highest Court exercising criminal jurisdiction in a State has inherent power to make any order for the purpose of securing the ends of justice. This power extends to expunction or ordering expunction of irrelevant passages from a Judgment or order of a subordinate Court and would be exercised by it in appropriate cases for securing the ends of justice. Being an extra-ordinary power it will, however, not be pressed in aid except for remedying a flagrant abuse by a subordinete Court of its power such as by passing comment upon a matter not relevant to the controversy before it and which is unwarranted or is likely to harm or prejudice another.

Note :—Remarks against the Stranger on the application of the stranger can be expunged U/s 561-A Cr.PC.

D. Raghubir Saran Vs State of Bihar
A.I.R. 1964 S C. 1 . 1964 (1) Cri. L.J. 1

(ii) The State is a juristic person. The Code of Criminal procedure itself recognises in some of its provisions the rights of the State Government such as, the right to give sanction and to move the court for necessary action etc., the State Government being the authority or person authorised to executive Government at the relevant date.

(*Expunge-contd*)

Therefore, the State Government can make an application under S. 561-A For getting the remerks against the Police force of the State expunged.

Note :—Remarks were expunged.

State of Uttar Pradesh Vs Mohammad Nain
A.I.R. 1964 S.C. 703 : 1964 (1) Cri. L.J. 549

Extra Judicial Confession

(i) Usually and as a matter of caution, court's require some material corroboration to confessional statement, such as extra judicial, corroboration which connects the accused person with the crime in question.

Note :—In this case corroboration was taken from the circumstantial evidence.

Ratan Gond Vs State af Bihar
A.I R. 1959 S.C. 18 1959 Cri. L.J. 108

(ii) Extra Judicial Confession, if voluntary can be relied upon by the court along with other evidence in convicting the accused.

Note:—On the basis of extra-judicial confession the coviction was upheld.

Mulk Raj Vs The State of U.P.
A.I.R. 1959 S.C. 902 : 1959 Cri. L.J. 1219

(iii) Extra-Judicial confessions are not usually considered with favour but that does not mean that such a confession coming from a person who has no reason to state falsely and to whom it is made in circumstances which tend to support his statement, should not be believed. The extrajudicial confession of the appellant to Ujegar Singh finds ample support from the appellant did purchase a sword a day before, that that very sword was found to be stained with human blood shortly after the murder, and that that sword was handed over by the appellant himself to the Police Officer at the Police Station .

Note:—Death sentence was confirmed.

Ram Singh Vs State of Uttar Pardesh
A.I.R 1967 S.C. 152 (January Part) Cri. L J. 152

Eye Sight

The eye sight of the P.W.I. had been too dim to enable to see clearly in the dark night, as he cliamed to have done, that the two accsed had dealt the fatal blow. The evidence of P.W.I. was subject to reasonable doubts.

Note:—Appeal was accepted.

Mohinder Singh Vs State of Punjab
A I.R. 1955 S.C. 762 : 1955 Cri.L.J. 1542

F

Fabrication

The Ahalmd of the Tehsildar in conspiracy with one H ante dated certain applications to Nov. 9. 1963, to make it appear that it was prior to the sale-deed which took place on Dec. 4, 1962. Ahalmd made an incorrect entry about a case actually in court with the intention that the date of the institution of the proceedings may be taken to be Nov. 9, although the case was alleged to be instituted later. His offence falls u/s 192 which is punishable u/s 193 IPC.

Such a case could only be instituted by a court in which or in relation to which this offence and its abetment were committed and a private complaint is therefore incompetent.

The offence of fabricating false evidence comes into existence when a person causes any circumstance to exist or makes any false entry in any book or record or makes document containing false statement intending such entry, statement or record be used in evidence. The moment it is made, the offence is complete even though the record is not used in judicial proceedings

Kamla Prasad Singh Vs Hari Nath Singh
A.I.R. 1968 S.C. 19

Facts

Whether an offence was committed in the course of official duty or not, will depend on the facts of each case.

(A.I.R. 1943 F C. 43-referred).

Baijnath Vs State of Madhya Pradesh
A.I.R 1966 S.C. 220 : 1966 Cri. L J. 189

Fact deposed and discovered

Where several of the accused gave information to the police that the dead bodies could be recovered in the Sakinala, which is a stream running over several miles, but such an indefinite information could not lead to any discovery unless the accused followed it up by conducting the police to the actual spot where parts of the two bodies were recovered. This information can be used only against that accused who leads first.

Lachhman Singh Vs The State
A.I.R. 1952 S.C. 167 : 1952 Cri. L.J. 853

Fact Discovered

(i) The accused stated to the police that he would give the clothes of the deceased which he had placed in a pit in the brick kiln and that thereafter the accused in the presence of the witnesses, dug the pit in the brick kiln and took out the clothes, which were identified by reliable evidence as the clothes of the deceased, this statement of the accused to the police was held admissible.

Pershadi Vs State of Uttar Pradesh
A.I.R. 1957 S.C 211 : 1957 Cri. L.J. 328

(ii) On being asked by the police about the stolen property the accused brought a box and a key and said that he had opened the lock of the shop of the complainant with that key. The handing over of the key is not a confessional statement but the confession lies in the fact that with that key the shop of the complainant was opened and, therefore, that portion will be inadmissible in evidence and only that portion will be admissible which distinctly relates to the fact discovered i e, the finding of the key. Similarly the recovery of the box is provable because there is no statement of confessional nature in that memorandum

Udai Bhan Vs State of Uttar Pradesh
A I.R 1962 S.C. 1116 : 1962 (2) Cri. L J. 251

(iii) It is fallacious to treat the fact discovered within section 27 of the Evidence Act as equivalent to the object produced ; the fact discovered embraces the place from which the object is produced.

Prabhoo Vs State of Uttar Pradesh
A.I.R. 1963 S.C. 1113 : 1963 (2) Cri. L J. 182

Factories Act

(i) When the statute says that it will be the duty of the occupier or the manager to keep the guard in position when the machine is working and when occupier or Manager want to prove that he has not done so, it will be for him to establish that notwithstanding this he was not liable.

The State of Gujarat Vs Jethalal Ghelabhai Patel
A.I.R. 1964 S C. 779 : 1964 (1) Cri. L J. 558

(ii) There is a duty cast, under the Act, upon the occupier or manager, to comply with the peremptory provisions of the Act, but, under S. 101 of the Factories Act, when the Manager or occupier is charged with an offence, he is entitled to make a complaint, in his own turn, to establish facts mentioned in the said section ; and, if he is able to establish that it was such other person, who has committed an offence, and satisfies the other requirements of the said section, the manager or occupier is absolved from all

(Factories Act-contd)

Act

liability. It is also emphasized that an adequate safeguard has been provided, under S. 101, under which. in circumstances mentioned therein the occupier or manager can save himself, if he proves that he is not the real offender, but some other person, charged by him is. It is further necessary for the appellant to establish the two essential facts mentioned in S 101 of the Act, viz., (i) that he has used due diligence to enfore the execution of the Act, and (ii) that other respondents 2 and 3 committed the offence in question without his consent, knowledge or connivance.

Note :—The appellant duly proved the above mentioned requirements of the statute. So the appeal was accepted.

Maneklal Jinabhai Kot Vs State of Gujrat
1967 S.C. 1226. 1967 Cri. L.J. 1092

Purshottamdas Ranchhoddas was a lessee from the Port Trust Bombay of an open plot of land. He established a factory called the Sunderdas Saw Mills. He closed down the factory on April 1, 1957. In July 1957, the ex-worker of the factory combined together to form five partnerships and by agreements of leave and licence. Purshottamdas Ranchhoddas gave in their use the premises of the factory and the machinery installed there. He himself did not join any of the five partnerships The licensees were to pay a fixed sum for the use of the premises and the machines.

Under Section 2 (n) of the Act an occupier of a factory means the person who has the ultimate control over the affairs of the factory. The section 85 of the Factories Act (1948) does not contemplate a case where the owner hands over the factory on rent and the workers work without his permission and not under agreement with him In other words, if there is no connection between the owner and the workmen in the sense that they work without his permission and without an agreement with him, there would be no question of the liability of the owner as an occupier.

Where the machinery and the plant has been so specifically entrusted to the custody or use of the various partnerships and the owner of the premises cannot be made liable.

Held :—Ranchhoddas could not be made liable for not taking out the licence.

The State of Maharashtra Vs Jamnabai Purshotam Asar
A I.R. 1968 S.C. 53

Failure

Failure to furnish to the accused the copies of the statements of the witnesses recorded in the course of investigation may not vitiate the trial.

Noor Khan Vs State of Rajasthan
A.I.R. 1964 S.C. 286 : 1964 (1) Cri L J. 167

airness

The Supreme Court was unable to enter into the question of the fairness or unfairness of the trial due to certain irregularities in the investigation, for it did not think that it affect the merits of the matter.

Gajanand Vs State of Uttar Pradesh
A.I R. 1954 S.C. 695 1954 Cri L J. 1746

False statement

(i) Whenever a man makes a statement in the court on oath he is bound to state the truth, it is no defence to say that he was not bound to enter the witness box.

Ranjit Singh Vs The State of Pepsu
A.I.R. 1959 S.C. 843 : 1959 Cri L.J. 1124

(ii) If the statement made by a person in the affidavit is found to be false, he commits an offence u/s 193 I P.C.

Ranjit Singh Vs State of Peshu
A.I.R. 1959 S.C. 843 : 1959 Cri L J. 1124

False Evidence

(i) A court intending to make a complaint against a witness is required to record a finding that in its opinion a person appearing as a witness has intentionally given false evidence and that for the eradication of the evils of perjury and in the interest of justice it is expedient that such witness should be prosecuted for the offence, and to give that witness an opprrtunity of being heard as to whether a complaint should be made or not

Where no finding to this effect is given in the order, such order shall be in the breach of the express provisions of S. 479 A Cr.PC and can not be allowed to stand.

Dr. B.K. Pal Chaudhry Vs State of Assam
A.I.R. 1960 S.C. 133 : 1960 Cri L J· 174

(ii) Whereas S. 476 Cr. P.C. is a general provision dealing with the procedure to be followed in respect of a variety of offences affecting the administration of justice, in so far as certain offences falling under sections 193 to 195 and 471 I.P.C. are concerned. the court before which that person has appeared as a witness and which disposed of the case can alone make a complaint. The provisions of section 476 to 479 Cr. P.C. are totally excluded where an offence is of the kind specified in secion 479 A (1).

Note:—On this sole ground the appeal was accepted.

Shabir Hussain Bholu Vs State of Maharashtra
A.I R. 1963 S.C. 816 : 1963 (1) Cri. L.J. 803

(*False Evidence-contd*)

(iii) The maxium *falsus in Uno, falsus in omnibus* (false in one thing, false in every thing) is neither a sound rule of law nor a rule of practice. Hardly one comes accross witness whose evidence does not contain a grain of untruth or at any rate exaggeration, embroideries or embellishments. It is, therefore, the duty of the court to scrutinize the evidence carefully but it cannot obviously disbelieve the substratum of the prosecution case or the material part of the evidence and re-construct a story of its own out of the rest.

Ugar Ahir Vs State of Bihar
A.I.R. 1965 S.C. 277 : 1965 (1) Cri L J. 256 (Feb Part)

(iv) The definition of the offence of giving false evidence applies to the affidavit.

Baban Singh and another Vs Jagdish Singh and others
A I.R. 1967 S.C. 68 (January Part 1967 Cri L.J 6

False Pretence

It is not necessary that a False pretence should be made in express words by the appellant It may be inferred from all the circumstances, including the conduct of the appellant in obtaining the property, and in Ex. P-34 (a) the appellant stated something which was not true and concealed from P.W. 2 the fact that he was not a member of any recognised association and that he was not entitled to carry on the forward contract business. It is clear that P.W. 2 would not have parted with the sum of Rs. 12 000/- but for the inducement contained in Ex. P-34 and the representation of the appellant that he could lawfully carry on forward contract business.

So the appellant has been rightly convicted u/s 420 I P.C.

Shivanarayan Kabra Vs The State of Madras
A.I.R. 1967 S C. 986 (July Part) 1967 Cri L J. 946

False Report

Report to Tehsildar with a view to take action. Report found false. Offence u/s 182 Penal Code is complete even if no action is taken on report. Prosecution must be launched on a complaint in writing by Tehsildar and the Tehsildar is not to leave it to the police to put a charge sheet Complaint or charge sheat by the police is without Jurisdiction ab-initio as the report in writing should have been made by the Public Servant concerned i e. the Tehsildar.

Daulat Ram Vs State of Punjab
A.I.R 1962 S C 1206 : 1962 (2) Cri. L.J. 286

Fatal blow

Where it is not known which particular person gave the fatal blow but it is clear that the murder was committed by six culprits including accused 1 and 5 in furtherance of the common intention of all and each of them is liable for

the murder as though it had been committed by him alone. Accused 1 and 5 were rightly convicted u/s 302 read with S. 34 IPC. and were sentenced to death.

Jagir Singh and another Vs State of Punjab
1968 S.C. 43 (Jan. part)

Favour

There are two important factors in every criminal trial that weigh heavily in favour of an accused person ; one is that the accused is entitled to the benefit of every reasonable doubt and the other, an off-shoot of the same principle, that when an accused person offers a reasonable explanation of his conduct, then, even though he cannot prove his assertions, they should ordinarily be accepted unless the circumstances indicate that they are false.

Aher Raja Khima Vs State of Saurashtra
A.I.R. 1956 S.C. 217 : 1956 Cri. L J. 426

Final

(i) Section 369 of Cr P. C. being subject to the other provisions of the Code must be read as subject to section 430 and as the finality enshrined in the latter section does not attach to decisions or orders made in revision u/s 439 Cr. P C. Section 439 (6) must be read as controlled by section 430 Cr. P. C. That the summary dismissal of the appeal filed by the appellant in the High Court is a judgment of conviction by the High Court and is final so far as the appellant is concerned and he can not initiate any further revision application either against his conviction or for reduction of sentence after that dismissal but that is not final so far as the State is concerned and the State is entitled to apply in revision for enhancement of sentence.

But as soon as notice to the accused u/s 439 (6) is issued, he (accused) gets a fresh right to challange that order of conviction.

U.J.S. Chopra Vs State of Bombay
A.I.R. 1955 S.C. 633 : 1955 Cri. L.J 1410

(ii) Under Article 134 of the Constitution of India an order cannot be said to be 'Final Order' if it does not of its own force bind or affect the rights of the parties, e.g., a court in allowing a petition of one of the parties in a suit to call for the production of a document from the Government is not a final order, it is only an interlocutory order.

The State of U.P. Vs Col. Sujan Singh
A I.R. 1964 S.C. 1897 : 1965 (1) Cri L J. 94

Finding-Uncertain

(i) Before S. 149 can be called in aid, the Court must find with 'certainty' that

(Finding Uncertain-contd)

there were at least five persons sharing the common object. A finding that three out of seven 'may or may not have been there' betrays uncertainity on this vital point and it consequently becomes impossible to allow the conviction to rest on this uncertain foundation.

Dalip Singh Vs State of Punjab
A.I R. 1953 S C. 364 : 1953 Cri. L J. 1465

(ii) **Under Section 19 (F) of the Arms Act.**

An acquittal of an accused in trial is tentamount to a finding that the prosecution had failed to establish the possession of certain fire-arm from the accused as alleged. This fact of possession of fire-arm could not be proved against the accused in the subsequent proeeedings between the prosecution and the accused. The evidence against him in the latter proceedings would have to be considered regardless of the evidence of recovery of the fire-arm.

Pritem Singh Vs State of Punjab
A.I R. 1956 S.C. 415 · 1956 Cri L J. 80ç

(iii) In an appeal the Supreme Court can form its own conclusions, when the finding on questions of facts are not concurrent of the lower courts.

Mohammed Dastagir Vs The State of Madras
A.I R. 1960 S C. 756 · 1960 Cri. L J. 1159

Finding of fact Concurrent

(i) It is the usual practice of the Supreme Court to accept the concurrent findings of fact arrived at by the courts below unless there are exceptional grounds to enable it to depart from the usual practice.

Deep Chand Vs State of Rajasthan
A.I R. 1961 S.C 1527 · 1961 (2) Cri. L.J 705

(ii) Ordinarily the Supreme Court will not look beyond the finding of fact arrived at by the Courts below, but in a case where the decision on a plea of alibi has been arrived at in disregard of the principle that the standard of proof which is required in regard to that plea, must be the same as the standard which is applied to the prosecution evidence and in both cases it should be a reasonable standard.

Mohinder Singh Vs The State
A.I R. 1953 S C. 415 : 1953 Cri. L.J. 1761

(iii) Though in an appeal under special leave the Supreme Court is bound by the finding of the fact arrived at by the High Court, but if the High Court has not dealt with the appeal, as it should have, the Supreme Court will proceed to hear the appeal on evidence.

Jumman Vs The State of Punjab
A.I R. 1957 S C. 469 1957 Cri. L J. 586

(iv) In an appeal under Art. 136 of the Constitution against the judgment of the High Court convicting an accused after setting the order of acquittal made by a Subordinate Court, the Supreme Court has undoubted jurisdiction to interfere even with findings of fact arrived at by the High Court. But this wide jurisdiction has to be regulated by the practice of the Court.

Nihal Singh Vs The State Punjab
A.I.R. 1965 S C 26 : 1965 (1) Cri. L.J. 105

Fire

There can be no doubt that the omission of the appellant to take proper care with burners, in particular when such combustible matter as turpentine in large quantity was stored at a distance of 8 to 10 feet from the burners, was such omission as amounted to insufficient guard against probable danger to human life. Moreover, all this was done in breach of the general and special conditions of the license given to the appellant for storage of turpentine, varnish and paint. There cannot be any doubt that the appellant knowingly, or at least negligently, failed to take such order with fire and the combustible matter as would be sufficient to guard against any probable danger to human life. In the circumstances the appellant has been rightly convicted under section 285 of the Indian Penal Code.

Ajaib Singh Vs Gurbachan Singh
A.I.R. 1965 S.C. 1619 (October)

Fire-arm

It may, however, be mentioned that in cases of attempt to commit murder by fire arm, the act amounting to an attempt to commit murder is bound to be the only and the last act to be done by the culprit. Till he fires, he does not do any act towards the commission of the offence and once he fires, and something happens to prevent the shot taking effect, the offence under S. 307 is complete.

Om Parkash Vs State of Punjab
A I.R. 1961 S.C. 1782 : 1961 (2) Cri. L J. 848

First information Report

(i) First Information Report was made within 6-1/2 hours of the occurrence at 12 miles from the police station. The victim did not die at once. F.I.R. was prompt.

Dalip Singh Vs State of Punjab
A.I R. 1953 S.C. 364 : 1953 Cri. L.J. 1465

(ii) The absence of the name of the appellant Thakurprasad in the first information report and the absence of the name of marks of injury on his person are only material and relevant for the purpose of appreciation of the evidence. The

(First information Report-contd)

Courts below having come to a definite finding on the evidence before them that the appllant Thakurprased was a member of the unlawful assembly and took some part in inflicting injuries on Nem Singh in prosecution of their common object. This Court cannot go behind the concurrent finding.

Thakur Prasad Vs State of Madhya Pradesh
A.I R 1954 S.C. 30 · 1954 Cri. L J. 261

(iii) The absence of the names in the F.I.R. is, not of much consequence especially when the names were disclosed in full at the time of the inquest.

Pandhrang Vs State of Hyderabad
A.I.R. 1955 S C. 216 . 1955 Cri. L J. 572

(iv) A first information report is not a substantive piece of evidence and can only be used to corroborate the statement of the maker U/s 157 of the Evidence Act or to contradict it U/s 145 of Evidence Act. It cannot be used as evidence against the maker at the trial if he himself becomes an accused, nor to corrborate or contradict other witnesses.

Nisar Ali Vs State of Uttar Pradesh
A.I.R. 1957 S.C. 366 : 1957 Cri. L.J. 550

(v) It is well settled that the first information report is not substantive evidence, but can only be used to corroborate or contradict the evidence of the informant given in court or to impeach his credit.

State of Bombay Vs Rusy Mistry
A.I R. 1960 S.C 391 : 1960 Cri. L J. 532

(vi) If the complaint made by the informant to the police is not the first one, it is not the F.I.R., so it is hit by sections 161 and 162 Cr. P C. and the judge should not rely upon it except to the extent permitted by the proviso to section 162 i.e. to contradict the informant with reference to any particlar statement therein

State of Bombay Vs Rusy Mastry
A.I R. 1960 S.C 391 : 1960 Cri. L.J. 532

(vii) **F.I.R. lodged by accused himself.**

First information report is not a statement made to a police officer during the course of investigation. S.25 of the Evidence Act and 162 of the Code of Criminal Procedure do not bar its admissibility. The report is an admission by the accused of certain facts which have a bearing on the question to be determined by the Court. U/s 21 of the Evidence Act admissions of an accused can be proved against him

Faddi Vs State of Madhya Pradesh
A.I.R 1964 S C. 1850 : 1964 Cri. L J. 744

(viii) The First information report lodged by the general Power of attorney is by the person aggrieved. So the law was rightly set in motion on the basis of this report.

A.I.R. 1967 S C. D. 61 349 .1967 Cri. L J. 409

Foreigner

(i) S. 3 of the Penal Code clearly indicates that a foreigner who commits an offence within India is guilty and can be punished without any limitation as to his corporeal presence in India at that time. S. 2 of the Penal Code also apply to a foreigner who has committed an offence in India.

Mobarik Ali Ahmed Vs State of Bombay
A.I R 1957 S.C. 857 : 1957 Cri. L J. 1346

(ii) A person who is not a citizen of India is a foreigner,
The appellant entered India in 1956 on a Pakistan passport, the visa endorsed on it enabled him to stay in India till August 8-1956 The Delhi administration made an order u/s 3 of the Foreiginer Act and served it on him on Nov. 19-1959 imposing the restrictions on his stay. The appellant did not comply with the said restrictions and, therefore, he committed an offence within the meaning of section 14 of the Act. This is no defence that he was not a foreigner under the original definition He has committed the offence under the existing law.

Fateh Mohd. Vs The Delhi Administration
A.I.R. 1963 S.C 1035 . 1963 (2) Cri. L J. 55

(iii) A prima facie reading of the foreigners Act shows that if on the date when the offence is committed a person is a 'foreigner', as defined by the act, it would be no excuse for him to say that on an earlier date he was not a foreigner.

Ibrahim Vs State of Rajasthan
A I.R. 1965 S.C. 618 : 1965 (1) Cri. L J 506

Foreign Act

When the appellant is being prosecuted U/s 14 of the Foreigners Act, 1946), in determining the question as to whether he is a foreigner within the meaning of the said Act or not,
the onus of proving that such a person is not a foreigner. shall notwithstanding anything contained in the Indian Evidence Act, be upon such person. So in the present proceedings in deciding the question as to whether the appellant was an Indian citizen within the meaning of Art. 5 of the constitution, the onus of proof will have to be placed on the appellant to show that he was domiciled in the territory of India on January 26, 1950 and

that he satisfied one of the three conditions prescribed by cls. (a) (b) and c) of the said Article. It is on this basis, the trial of the appellant will have to proceed.

Note :—Full opportunity for producing the defence evidence was not given to the accused, so the case was remanded for retrial.

A.I.R 1965 S.C 180

Foreign Material

The exposure of the stud hole permits the insertion of foreign material inside the meter retarding the rotation of the inside disc, and is thus an artificial means for preventing the meter from duly registering the energy supplied For purposes of Sectiou 44, of the Electricty Act, the existence of such an artificial means raises the presumption that the consumer, in whose custody or control the meter is, wilfully and knowingly prevented the meter from duly registering To raise this presumption, it is not necessary to prove also that the consumer was responsible for the artificial means or that the meter was actually prevented from duly regis'ering.

It is for the accused to rebut this statutory presumption.

Note :—Appellant did not rebut the presumption, so the sentence and convictions were upheld.

Jagannath Singh and another Vs B.S Ramaswary and another
A I.R 1966 S C 849 : (Para 5) 1966 Cri. L J. 697

Foregin power

On a correct interpretation of the meaning of the word ' the relations of India with foreign powers" in section 3 of the Prevention of Detention Act, Pakistan must be regarded as a foreign power, although that country may be a part of the common wealth as India is

Jagan Nath Vs The Union of India
A.I R. 1960 S C. 625 1960 Cri. L J 764

Forefeiture

(1) Since 26 1 1950, no bond executed in favour of the Empress of India could be said to be a bond executed under the code of Criminal Procedure. The bond which the respondent had executed was to forfeit to the king Emperor, a certain sum of money if he made default in procuring the attendance of the accused before the Court. He did not execu e a bond by which he bound himself to forfeit the said sum either to the Union of India or that of the State of Uttar Pradesh So the bond executed in faveur of Emporar cannot be forfeited.

State of Uttar Pradesh Vs Mohammed Sayeed
A I R 1957 S.C. 587

(Forefeiture-contd)

(ii) The provision u/s 514 CrPc shows that before a surety becomes liable to pay the amount of the bond forfeited, it is necessary to give notice why the amount should not be paid and, if he fails to show sufficient cause, only then can the court proceed to recover the money. Failure to call upon to show cause and to give ample opportunity to prove the same is fatal and the proceedings u/s 514 Cr. P.C. are liable to be quashed.

Ghulam mehdi Vs State of Rajasthan
A.I.R. 1960 S.C. 1185 · 1960 Cri. L.J. 1527

(iii) It is the duty of the High Court under Section99-D of Criminal procedure code to set aside an order of forfeiture if it is not satisfied that the grounds, on which the Government formed its opinion, that the books contained matters the publication of which would be punishable under any one or more of sections 124-A, 153 A, or 295 A of the Penal Code justify that opinion. It is not its duty to do more and to find for itself whether the book contained any such matter what so ever.

Harnam Dass Vs State of Uttar Pradesh
A.I.R. 1961 S.C. 1662 : 1961 (2) Cri L.J. 815

Forest Act

The fact that Tripura Act does not make provision for preliminaries before a forest could be notified as a reserved forest, does not detract from such a notification under Tripura Act being one under Indian Forest Act.

Union of India (Tripura) Vs Abdul Jalil
A.I R. 1965 S.C. 147

Forged

A Head Constable of police who was posted as an Accountant in the National Volunteer Corps office in Ferozepore District. On 7.2.1950 he withdrew from the Treasury a sum of Rs. 11,579-8-0 on the strength of a contingent voucher being a **subsistence** allowance bill for the month of February 1950, purporting to be signed by Rao Sahib Chowdhury Bhim Sing, Senior Superintendent of Police, Ferozepur. These signatures of Rao Sahib Chowdhury Bhim Singh were alleged to be forged and the appellant was charged that he on or about 7-2-50 fraudulently and dishonestly used as genuine a forged document viz **subsistence** allowance bill for the month of February, 1950 which he knew or had reasons to believe at the time used it to be a a forged document and there by committed an offence punisable under S. 467, Penal Code

Further held. The sanction of the State Government to prosecute under S. 5 (2) of East Punjab National volunteer corps of Act was not necessary

Ram Narain Vs State of Punjab
A.I R. 1955 S.C. 322 : 1955 Cri L J. 871

Forged document

(i) When a fact had to be proved before a courts or a tribunal and the court or tribunal calls upon the person who is relying upon a fact to prove it by best evidence, it cannot be a defence as to the offence of forgery that he was required to prove his case by the best evidence and because he was so required he produced forged documents.

Jagan Nath Prasad Vs State of Uttar Pradesh
A.I.R. 1963 S.C. 416 : 1963 (1) Cri L.J. 330

(ii) An offence punishable under section 471 of Penal code being one of fraudulently or dishonestly using as genuine any document which the accused knows or has reason to believe to be a forged document, does not fall within the ambit of section 479 (A) (1) of Cr. P.C. and, therefore, the authority of the court to act under section 476 of the Code is not impaired by sub section 6 of section 479 A.

Babu Lal Vs State of Uttar Pradesh
A.IR. 1964 S C 725 : 1964 (1) Cri. L.J 555

Forgery

Ante-dated documents are forged documents and falls within the purview of offence u/s, 465 and 466 of Penal code.

Rao Shiri Bahadur Singh Vs State of Vindhya Pradesh
A.I R. 1954 S.C. 322 (332) : 1954 Cri. L.J. 910

(ii) Offences of forgery of a document as described in Section 463 I.P.C. and of using such forged documents, if produced or given in evidence by a person other than a party to a proceeding in a Court, do not require a complaint in writing of the Court concerned, but prosecution in respect of offences under Sections 193, to 196, 199 and 200 (among others) committed in a judicial proceeding by a person, (whether a party or not) requires a complaint in writing of the Court before which the offence is committed or of some other Court to which such Court is subordinate. It is this difference which has apparently induced the selection of Sections 463/471 rather than Section 193/196 of the Indian Penal Code. The former do not require a complaint by the Court but the latter do.

Dr. S. Dutt Vs State of U.P.
A.I.R. 1966 S.C. 523 (Page 525) : 1966 Cri. L J. 459

(iii) An offence under Section 477 I.P.C. requires sanction under Section 197 Cr. P.C. of the State Govt. be obtained before the cognizance of the offence is taken. Sanction taken after it is of no use.

Baijnath Vs State of Madhya Pradesh
A.I.R. 1966 S.C. 221 : 1966 Cri. L J. 189

Form

It should be clear from the form of the sanction that the sanctioning authority considered the evidence before it and after a consideration of all the circumstances of the case, sanctioned of the prosecution.

Jaswant Singh Vs State of Punjab
A.I.R. 1958 S.C 124 : 1958 Cri L.J 265

Former Part

The expression 'former part' in the last part of section 239 Cr. P C. cannot be construed to refer only to the first sub division of Chapter XIX which deals with the form and content of the charges and the powers of the court with regard to the absence of charge and alteration of charge. For, even in the absence of those words the earlier provisions could not have been ignored. For, it is a rule of construction that all the provisions of a statue are to be read together and given effect to and that it is, therefore, the duty of the Court to construe a statute harmoniously. Thus, while it is clear that the sections preceding S. 239 have no overriding effect on that section, the courts are not to ignore them but apply such of them as can be applied without detracting from the provisions of S 239. It is also open to the court to avail itself cumulatively of the Provisions of the diffeint clauses of S. 239 for the purpose of framing charges and charges so framed will not be in **violation** of the law, the Provisions of S. 233 234, 235 not withstanding.

The State of Andhra Pradesh Vs Cheemalapati Ganeswara Rao
A.I.R 1963 S.C. 1850 : 1963 (2) Cri. L J. 671

Former Statement

(i) The former statement which can be used as corroboration is the statement at or about the time the fact took place about which evidence has been given in court by the witness to be corroborated, and than in order to make the former statement admissible under section 157 Evidence Act it is not necessary that the **witness to be corroborated must also**, besides making the former statement at or about the time the fact took place, **say in court in his testimony that he had made the former statement to another Pw also.**

Fact :—Jawana Ram saw the occurence and the assailants, and narrated the same to Rooparam but this factum of narration to Rooparam, he i.e Jawanaram did not state in his evidence. The evidence of Rooparam is admissible as it was not necessary before the Statement of Rooprams as to what he heard from Jawanaram can be admissible for Jawanaram also to say in his tertimony in court that he told Roopram immediately after the incident the names of the five assailants. So the statement of Rooparam coroborates the version given by Jawana Ram.

Ram Ratan Vs State of Rajasthan
A.I R. 1962 S C. 424 : 1962 (1) Cri L.J. 473

(*Former Statement-contd*)

(ii) A former statement can only be used for corroboration and not as substantive evidence of the fact in issue. Even as corroboration the value of such a statement must always depend on the peculiar circumstances of each case. Under S 157 of the evidence Act the former statement is admissible if it relates to the same facts and was made at or about the time when such a fact took place.

It is not necessary u/s 157 that a witness to be corroborated must also say in his evidence in court that he made former statement to witness through whom he is sought to be corroborated

Former statement not communicated to another i. e., notes made by a witness in his diary, constituted a former statement with in the meaning of S. 157 of Evidence Act. The document of this nature is only used to corroborate the main evidence of the witness If the main evidence is shaken by cross examination, Corroboration of such a document would be of no use.

(*i*) *Bhogi Lal Vs State of Bombay*
A.I R 1962 Supplse 75 C R. 310,315
(*ii*) *Gauranga Charan Mohanty Vs State of Orissa*
D.L J. 1968 S C. N 9 (*Page 16*)

Forthwith

When an act is done after an interval of time and there is no explanation forthcoming for the delay, it cannot be held to have been done "forthwith".

Keshav Nilkanth Jogbkar Vs The commissioner of Police Greater Bombay
A.I R. 1957 S C. 28 . 1957 Cri. L J. 10

Forward Contract

Forward contract is not a wagering contract The expression "forward contracts" in S. 2 (c) includes speculative contracts which ostensible are for delivery of goods The appellant was the proprietor of a firm in Bombay. He advritised that People could invest capital in cotton, oil seeds and other commodities and that his J.G firm market reports issued by him could help them in the matter. One R. a wholesale merchant dealing in cotton seeds at kumbakonam became a subscriber to the reports. Terms of buisness were supplied by the appellants to R Neither the appellant nor his firm was a member of any recognised association within the meaning of the Act. R was induced to part with Rs/2000 for forward contract buisness in cotton and oilseeds by a fradulent representation that the appellant conducted such buisness even though he was not actually entitled to do any such buisness

Held·—Contract of this description falls within the definition of 'forward contract' within the meaning of Forward contract Act, 1952 and was not a wagering contract Appellant was rightly convicted u/s 420 I P C. and 21 (d) and (e) of the Forward contracts (Regulation) Act, 1952 (Act 74 of 1952).

Shivnarayan Kabra Vs State of Madras
A.I R, 1967 S C. 786 (July Part) : 1967 Cri L J 946

Fraud

The concealment of an already committed fraud is also a fraud.

R.K. Dalmia Vs The Delhi Administration
A I.R. 1962 S.C. 1821 : 1962 (5) Cri. L.J. 805

Fraudulently

An Expert produced credentials of his qualifications in the Court, under the order of Court.

Held·—His intention was not to cause any one to act to his disadvantage because he did not produce the diploma voluntarily, but under the orders of the Court. So he did not intend defrauding The offence do not fall within Sec 465/471, IIPc.

Dr. S. Dutt Vs. State of U.P.
A.I R. 1966 S.C. 523 : 1966 Cri. L. J 459

Free Fight

A free fight is "when both sides mean to fight from the start, go out to fight and there is a pitched battle." The question of who attacks and who defends in such a fight is wholly immaterial and depends on the tactics adopted by the rival commandors. When one party after preparation and armed with deadly weapon went to the other party's house. It could not be said in these circumstances that the both parties were pre-determined for a trial of strength and had had a free fight, rather the first party was the aggresson.

Gajanand Vs State of Uttar Pardesh
A.I R. 1954 S C. 695 : 1954 Cri L.J. 1746

(ii) When two contending parties, each armed with sharp edged weapon, clashed and in the course of free fight some injuries were inflicted on one party or the other, it cannot be said that either of them acted in a cruel or unusual manner. It would be otherwise if the deceased and his party were unarmed or armed with weapons which were not lethal or dangerous and the accused's party used sharp weapons In that case the accused must be deemed to have acted in a cruel or unusal manner.

Note :—The deceased's party was also armed with deadly weapon and the appellant also received minor injuries. Sentence was reduced from 302 IPC to 304 Part I of IPC and was sentenced to undergo R. I for seven years.

Dharman Vs State of Punjab
A.I.R. 1957 S.C. 324 : 1957 Cri.L J. 420

Fresh Complaint

A magistrate after making an order of discharge under S. 251, A (2) Cr.P.C. in respect of a charge for an offence triable as warrant case can still proceed

(*Fresh Complaint-contd*)

to try the accused for another offence disclosed by the Police report and triable by a Summon case. No Fresh complaint for such summon case is required by law.

Note :—In this case challan by the Police was put in u/s 332/323. Magistrate discharged the appellant u/s 332 but proceeded u/s 323 IPC. following the procedure for Summon case. The Procedure was held to be in accordance with law.

Pramatha Nath Mukherjee Vs The State of West Bengal
A.I.R. 1960 S.C. 810 : 1960 Cri.L J. 1165

Fresh Evidence.

High Court can take fresh evidence in reference under section 375 Cr P.C.

Jumman Vs State of Punjab
A.I R. 1957 S.C. 469 :1957 Cri.L J. 586

Fundamental Right

(1) Art. 358 permits the State to make laws only in infringement of Art 19 of the Constitution, and Art. 359 suspends only the right to move the court for the enforcement of the fundamental rights specified in the President's Order and, therefore, Art. 359 cannot be so construed as to enlarge the legislative power of Parliament beyond the limits sanctioned by Art. 358 and therefore, it should be confined only to executive infringements of the said rights. (2) Art. 359 does not permit the said executive to commit fraud on the constitution by doing indirectly what Parliament cannot do directly under Art. 358.

President's order under Art. 359 would only suspend the right to move the court of competent Jurisdiction the words 'Any court' used in Art 359 (1) include the Supreme court and the High Court before which the specified rights can be enforced by the citirzen.

(i) The snspension of Art- 19 of the constitution is complete during the period in Emergency and the legislative and executive actions which contravenes Art, 19 can not be questioned even after the emergeney is over.

(ii) Presidential order under Art 359 (1) cannot create a bar against a citizen asking the High Court to issue a writ in the nature of Habeas corpus.

(iii) The bar created by Art 359 (1) and the Presidential order issued under it apply to the proceedings under S 491 (1) (b) of criminal Procedure code as the proceedings initiated under S. 491 (1) (b) cannot make a substantial progress unless the validity of the, impugned law is examined on the ground of the contravention of the specified fundamental rights.

(iv) The detenu cannot be precluded because of this bar from raising the plea of malafides

(Fundamental right-contd)

(v) Excsesive delegations' plea can also be raised during emergency.

Makhan Singh Vs The State of Punjab
A.I R. 1964 S.C. 381 (408) : 1964 (1) Cri. L.J. 269

(2) A conviction of a person under the presumption raised under section 5 (3) of Prevention of Corruption Act in respect of pecuniary resources or property acquired before the Prevention of Corruption Act would not be a breach of fundamental rights under Art. 20 (1) of the Constitution.

Sajjan Singh Vs State of Punjab
A.I.R. 1964 S.C. 464 : 1964 (1) Cri. L.J. 310

(3) A person cannot asssert any fundamental right under Art. 19 (1) of the Constitution to carry out business in adulterated food stuffs.

The State ofUttar Pradesh Vs Kartar Singh
A.I R. 1964 S.C 1135 : 1964 (2) Cri L J. 229

Funds

Funds of the company or firm are the 'property' within the meaning of S. 403 or S. 405 of IPC and if one partner gets a dominion over the funds of company by cheating another, is guilty of dishonestly misappropriating the property of the company.

R.K. Dalmia Vs The Delhi Administration
A.I R. 1962 S C. 1821 : 1962 (2) Cri. L.J. 805

Fatal Blow

Two persons Shadheo and Remdeo were convicted by the Session Judge u/s 302 read with S. 34 IPC. High Court acquitted Remdeo & convicted Shadheo, and convicted conviction from S. 302/34 to S. 302 IPC. In other words High Court held Shadheo responsible for all the injuries but from the prosecution story it is not known who gave the fatal blow so the conviction of Shadheo alone u/s 302 cannot stand but can be convicted safely u/s 325 IPC Criminal appeal No 47 of 1965.

Decided on 24. 11.64.

"G"

Gain or loss

It is clear from the definition of theft in section 378 of I.P.C. that the gain or loss contemplated need not be a total acquisition or a total deprivation but it is enough if it is a **temporary retention of property by the accused** person wrongfully gaining or a temporary 'keeping out' of property from the person legally entitled.

The taking out of the aircraft by the appellant for the unauthorised flight has given the appellant the temporary use of of the aircraft, for his own purpose and has deprived the owner of the craft, for its use. There has been wrongful gain to the appellant and wrongful loss to the Government. So the offence of theft has been committed.

The State of Bihar Vs Ram Naresh Pandey
A.I.R 1957 S C. 369 : 1957 Cri. L J. 552

Gambling Act

It was contended that the club, was making a profit or gain by charging extra and late fee expenses from the persons who play Rummy on its premises.

Held :—As regards the extra charges for playing cards it can be said that clubs usually make an extra charge for any thing they supply to their members because it is with the extra payments that the management of the club is carried on and other amenities are provided. Money is collected for running various sections of the establishment just as some fee is charged for the games of billiards, ping-pong, tennis etc. an extra charge for playing cards (unless it is extravagant) would not show that the club was making a profit or gain so as to render the club into a common gambling house.

Rummy :—The game of Rummy is not a game entirely of chance like the 'three-cards' such as 'flush' 'brag' etc which is a game of pure chance. Rummy on the other hand, requires certain amount of skill because the fall of the cards has to be memorised and the building up of Rummy requires considerable skill in

holding and discarding cards So it cannot be said that the game of Rummy is a game of entire chance. It is mainly and preponderantly a game of skill.

State of Andhra Pradesh Vs K. Satyanaryane and others
Criminal appeal No 40 of 1965, decided on 23.11.1967
Delhi L.J. 1968 SCNG at Page 9

Gazette

It stands to reason that publication in the Gazette of India is the ordinary method of bringing a rule or subordinate legislation to the notice of the persons concerned. Hence, a plea of absence of knowledge of notification is not a valid defence.

State of Maharashtra Vs Mayer Huns George
A.I.R. 1965 S.C. 722 : 1965 Cri. L.J. 641

General Clause Act

Section 14 of the General Clauses Act deals with the exercise of a power successively and has no relevance to the question whether the power claimed can at all be conferred.

Gouri Chandra Kant Vs The Public Prosecutor Cuttack
A.I.R. 1963 S.C. 1198 : 1963 Cri. L.J. 194

General Manager

A General Manager of a company cannot in the very nature of things be expected to know the minute details of all the business that would have been doing on in various places, such as, General Manager of the buses is not expected to know the actual condition of the buses on the road.

Where the General Manager apply for the issue of the petrol for all the buses, and trucks including vehicles which were not in road-worthy condition and for which taxes had not been paid and on that misrepresentation got the petrol, the manager is not expected to know the condition of all vehicles and the prosecution has not been able to prove that the appellant appended his signature knowing or having reason to believe to be false. So the appellant was acquitted.

Sudhdeo Jha Uppal Vs The State of Bihar
A.I.R. 1957 S.C. 466 . 1957 Cri.L J 583

General Provision

S. 362 (2A) of the Criminal Procedure Code has application in a case where the accused pleads guilty and the provision of S 243 of the Criminal Procedure Code is a provision of a special character, and according to well established rule of enterpretation that special provision will take precedence and override the general provision of S. 262 (2A) of the Criminal Procedure Code.

Commissioner of Income-Tax, Madhya Pradesh, Nagpur and Vs another
Seth Govind Ram Sugar Mills
A.I.R. 1966 S.C. 24 (Para)

Gesture

The identifier may point out by his finger or touch the person identified, may either nod his head or give his assent in answer to a question adressed to him in that behalf or may make signs or gestures which are tentamount to saying that the particular property identified was the subject matter or the offence of the person identified was concerned in the offence.

Statements express or implied including the signs and gesture would amount to a communication of the fact.

Ram Kishan Mithanlal Vs State of Bombay
A.I R. 1955 S.C. 104 : 1955 Cri.L.J. 196

Good Character

The evidence of general reputation and general disposition is relevant in a criminal proceedings.

Bhagwan Swarup Vs The State of Maharashtra
A.I.R. 1965 S.C. 682 : 1965 (I) Cri.L.J. 608

Good Faith

Good faith is defined by Section 52 of the Indian Penal Code. Nothing is said to be done or believed in 'good faith' which is done or believed without due care and attention. It will be recalled that under the General Clauses Act, "A thing shall be deemed to be done in good faith where it is in fact done honestly whether it is done negligently or not." The element of honesty which is introduced by the definition prescribed by the General Clauses Act is not introduced by the definition of the Code; and we are governed by the definition prescribed by Section 52 of the Code. So in considering the question as to whether the appellant acted in good faith in publishing his impugned statement, we have to enquire whether he acted with due care and attention. There is no doubt that the mere plea that the accused believed that what he stated was true by itself, will not sustain his case of good faith, under the nineth exception of S 499 IPC. **Simple belief or actual belief by itself is not enough.** The appellant must show that the belief in his impugned statement had a rational basis and was not just a blind simple belief. That is whether the element of due care and attention plays an important role. If it appears that before making the statement the accused did not show due care and attention, that would defeat his plea of good faith. But it must be remembered that good faith does not require logical infallibility.

In dealing with the question of faith, the proper point to be decided is not whether the allegations put forward by the accused in support of the defamation are in substance true, but whether he was informed and had good reasons after due care and attention to believe that such allegations were true.

It would be a question to be considered on the facts and circumstances of each case.

Harbhajan Singh Vs State of Punjab and another
A.I.R. 1966 S.C. 97 (Page 103) 1966 Cri.L.J. 82

Gratification

Gratification is not restricted to pecuniary gratification or to gratification estimable in money. It should be gratification other than the legal remuneration. The talking of valuable things is also a gratification

C. I. Emden Vs State of Uttar Pradesh
A.I.R. 1960 S.C. 548 · 1960 Cri. L.J. 729

Graue and Sudden Provocation

When Sylvia, the accused confessed to her husband that she had illicit intimacy with the Ahuja (deceased) who was not present there, it can be assumed that he (husband) had momentarily lost his self control. But then appellant drove his wife and children to a Cinema, left them there, went to his shop, took a revolver on a false pretext, loaded it with six rounds, did some official business there and drove his car to the office of the deceased Ahuja and shot him. Three hours since the knowledge of illicit intimacy had elasped and, therefore, there was sufficient time for him to regain his self control even if he had not regained it earlier. The fact did not attract the provision of exception 1 to Section 300 I.P C.

K.M. Nanavati Vs State of Maharashtra
A.I R. 1962 S C. 605 : 1962 (1) Cri. L J. 521

Grounds of Appeal

(i) The omission to take the objection on the ground of prejudice in grounds of appeal is not necessarily fatal.

K.C Mathew Vs State of Travancore cochin
A I R. 1956 S.C. 241 : 1956 Cri. L J. 444

(ii) Memorandum of appeal with bold grounds as that the order of acquittal is against the weight of evidence on record and contrary to law is of no help to any of the parties of court. Such a bold ground leaves the door wide open for all kinds of submission Such a practice, if any, deserves to be discontinued.

Kepail Deo shukla Vs State of U.P.
A.I R. 1958 S C. 121 : 1958 Cri. L.J. 262

(iii) The petitioner who is a layman not experienced in the interpretation of documents can hardly be expected without legal aid, which is denied to him, to interpret the grounds in sense explained by lawyers. It is so upto the detaining authority to make his meaning clear beyond doubt, without leaving the person detained to his own resource for interpreting the grounds. Otherwise grounds being vague would render it impossible for the petitioner to make an adequate representation, each of the grounds communicated to the person detained must be sufficient to enable representation, which on being conside-

(Grounds of Appeal-contd)

red, may give relief to him. Where it has not been done in regard to even one of the grounds the petitioner's detention cannot be held to be in accordance with the meaning of Art. 21, and he is, therefore, entitled to be released.

Dr Ram Krishan Bhardwaj Vs The State of Delhi
A.I.R 1953 S C. 318 : 1953 Cri L J. 1241

(iv) The petitioner, detained under Section 3 (1) (a) (i) of the Kashmir Preventive Detention Act, is not entitled to know the grounds upon which he had been detained beyond what has been disclosed in the order itself, where the Government by order declared that it would be against the public interest to communicate to him the grounds on which the detention has been made.

P.L Lakhanpal Vs The State of Jammu and Kashmir
A.I.R. 1956 S C. 197 1956 Cri L J. 421

(v) Where allegations are not as precise and specific as might have been desired, but having regard to the nature of the alleged activities of the appellant, it is not unlikely that no more could be gathered or furnished. In this context, it is relevent to notice that the appellant himself does not appear to have felt that the grounds furnished were so vague as to hamper him in his right to make a representation under Article 22(5) and section 7 of the Act. It does not appear that he applied to the Government to be supplied with particulars especially when such a right to call for particulars has been recognised. So under these circumstances the grounds cannot be considered vague.

Lawrence Joachim Joseph D'souza Vs The State of Bombay
A I R. 1956 S.C 531 ·1956 Cri L J 935

(vi) Supreme court will not reason the evidence of identification in court unless exceptional grounds are established necessitating such a course.

Kanta Prashad Vs Delhi Administration.
A.I R. 1958 S.C. 350 : 1958 Cri. L.J. 698

(viii) Under S. 99-D it is the duty of the High Court to set aside an order of forfeiture if it is not satisified that the grounds on which the Government formed its opinion that the books contained matters the publication of which would be punishable under any one or more of Ss. 124-A, 153 A or 295-A of the Penal Code could justify that opinion It is not its duty to do more and to find for itself whether the book contained any such matter whatsoever, and where the government does not state the grounds of its opinion, the High Court must set aside the order where the grounds do not justify the action

Harnam Dass Vs State of Uttar Pradesh
A.I.R. 1961 S.C. 1662 : 1961 (2) Cri. L.J. 815

Guarantee

The guarantee under Article 20 (3) would be available to persons against whom a first information report has been recorded as accused. It would extend to any compulsory process for production of evidentary documents which are reasonably likely to support prosecution against them

M.P Sharma Vs Satish Chandra Disst. Magistrate
A I.R 1954 S.C. 300 . 1954 Cri L.J. 865

Gun Shot

If there were burnt edges of the wound, the distance between the muzzle and the victim would only be a few inches and not more then nine inches

Santa Singh Vs State of Punjab
A.I.R. 1956 S C 526 · 1956 Cri L.J. 930

"H"

Habeas Corpus

(i) In Habeas Corpus proceedings, the court is to have regard to the legality or otherwise of the detention at the time of the return and not with reference to the institution of the proceedings. The detention without the order of remand will be illegal

Ram Narayan Singh Vs The State of Dalhi
A I R. 1953 S.C. 277 · 1953 Cri. L.J 1113

(ii) The incalculable value of Habeas Corpus is that it enables the immediate determination of the rights of the appellant's freedom.

Ranjit Singh Vs The State of Pepsu
A.I.R. 1952 S.C. : 843 1959 Cri. L.J. 1124

(iii) The bar created by Art 359 (1) and the Presidential order issued under it also apply to the proceedings under S 491 (1) (b) of CrPc as the proceedings initiated u/s 491 (1) (b) cannot make a substantial progress unless the validity of the impugned law is examined on the ground of the contravention of the specified fundamental rights.

Makhan Singh Tarsikha Vs The State of Punjab
A.I.R. 1964 S.C. 381 : 1964 (1) Cri.L J 269

(iv) It is wrong to think that in habeas corpus proceedings the court is prohibited from ordering an inquiry into a fact. All procedure is always open to a Court which is not expressly prohibited and no rule of the Court has laid down that evidence shall not be received, if the Court requires it.

Mohd. Ikram Hussain Vs The State of Uttar Pradesh
A.I.R. 1964 S.C. 1625 : 1964 (2) Cri L.J. 590

(v) Where the detenu is in jail as a convicted person and the period of his sentence has still to run for some length of time, the order of detention can not be served and passed.

Smt. Godavri Shamra Parubkar and others Vs State of Maharashtra and others
A.I.R. 1964 S.C. 1128 : 1964 (2) Cri. L.J. 222

Habeas-Corpus-Bail

(vi) The High Court has jurisdiction to grant interim relief by way of bail to a detenu who has been detained under Rule 30 of the Defence of India Rules.

State of Bihar Vs Rambalak Singh & others
A.I R. 1966 S C 1441 · 1966 Cri. L.J. 1076

(vii) The mere fact that the detention order is passed during the pendency of habeas corpus proceedings cannot by itself lead to the conclusion that the order is vitiated by malice in law. It depends on the circumstances of the case. The detenu would have to prove not only that the detention order has been passed during the pendency of habeas corpus proceedings but also that there are other facts showing malice

If the Government considers an order of detention, which is the subject-matter of challenge, to be invalid, there is no reason why it should not pass a valid order.

Note :—In this case three successive orders of release and then order of detention were passed before the order of release were actually carried out, but those were held legal.

Godavari S Parubar etc. Vs State of Maharashtra
A.I R. 1966 S C 1404 (Page 1407) · 1966 Cri. L.J. 1067

(viii) It is for the court to consider in each case whether it is satisfied with the affidavit filed in the case It is further to be added that it is for the detaining authority to be satisfied, whether on the material before it, it is necessary to detain a person under R 30 and that this question is not Justiciable.

A I R 1966 S.C. 1404 : 1966 Cri. L.J. 1067

Habitual Contravention

A single contravention proved against a person would make the accused guilty under section 7 of the Drugs and Magic Remedies Act. Habitual contraventions are not required.

Dr Yash Pal Sapi Vs The Delhi Administration
A.I.R 1964 S.C 784 . 1964 Cri. L.J. 560

Habitual Offender

Under Section 23 of the Police Act, 1861, the police is under a duty to prevent commission of offences and to collect intelligence affecting the public peace. For the efficient discharge of their duties, the police officers are empowered by the Punjab police Rules, 1934 to open the history sheets of suspects and to enter their names in police register No 10. These powers must be exercised with caution and in strict confirmity with the rules. The condition precedent to the opening of history sheet under Rule 23.9 (2) is that the suspect

(*Habitual Offender contd*)

is a person "reasonably believed to be habitually addicted to crime or to be an aider or abettor of such person"

If the action of the police officers is challenged. they must justify their action and must show that the condition precendent has been satisfied.

A habitual offender or a person habitually addicted to crime is one who is a criminal by habit or by disposition formed by repetition of crimes. Reasonable belief of the police officer that the suspect is a habitual offender or is a person habitually addicted to crime is sufficient to justify action under Rules 23 4 (3) (b) and 23.9 (2). Mere belief is not sufficient. The belief must be reasonable. It must be based on reasonable grounds.

Dhanji Ram Sharma Vs Superintendent of Police North Distt., Delhi Police and others
A I R. 1966 S.C 1766 : 1966 Cri. L.J. 1486

Hallucination

Many sane men give more than the necessary stabs to their victims. The number of blows given might perhaps reflect his vengeful mood or his determination to see that the victim had no escape One does not count his strokes when one commits murder. Further held that number of blows will not prove that the act of the accused was under hallucination

Note:—Plea of insanity was rejected.

Dahynbhai Chhaganbhai Vs State of Gujarat
A.I.R. 1964 S.C. 1563 : 1964 (2) Cri. L J. 472

Handwriting Expert

No adverse inference can be drawn against the prosecution from the fact that the opinion of the handwriting expert has not been obtained with respect to the endorsement on the acknowledgement receipt.

An adverse inference can only be drawn if prosecution withholds certain evidence and not merely on account of its failure to obtain certain evidence. So there is no question of presuming, that the evidence should have been against the prosecution, u/s 114 illustration (g) of the Evidence Act .

Note:—See, Handwriting at the end of Part "H"

Serichand K. Khetwani Vs State of Maharashtra
A.I R 1967 S.C. 450 (March part) 1967 Cri.L J 414 1967 S.C.D. 61

Harm-Trival Offence

The expression "Harm" has not been defined in the Indian Penal Code; in its dictionary meaning it connotes hurt, injury; damage, impairment, moral wrong or evil. There is no warrant for the contention raised that the expression ',harm" in Section 95 does not include physical injury. The expression "harm" is used in many sections of the Indian Penal Code. In Sections 8I, 87, 88, 89,91, 92, 100, 104, and 106 the expression can only mean physical injury. In Section 93 it means an injurious mental reaction. In Section 415

(Harm-Trival Offence-contd)

it means injury to a person in body, mind, reputation or property. In Sections 469 and 499 "harm", it is plain from the context, is to be reputation of the aggrieved party. There is nothing in Section 95 which warrants a restricted meaning. Section 95 is a general exception, and if that expression has in many other sections dealing with general exceptions a wide connotation as inclusive of physical injury, there is no reason to suppose that the Legislature intended to use the expression 'harm' in Section 95 in a restricted sense

Whether an act which amounts to an offence is trival would undoubtedly depend upon the nature of the injury, the position of the parties, the knowledge intention with which the offending act is done, and other related circumstances There can be no absolute standard or degree of harm which may be regarded as so slight that a person of ordinary sense and temper would not complain of the harm. It cannot be judged solely by the measure of physical or other injury that act causes.

Note :—In this case harm was held to be so slight which does not warrant complaint or conviction u/s 323 IPC. File (papers) was thrown on the complaiment which caused scratches on the elbow.

Mrs Seeda Menezls Vs Yusuf Khan Hazi Ibrahim Khan and another
A.I.R 1966 S.C. 1773 (Paras 4 & 5) . 1966 Cri.L.J. 1489

Hereinafter

The word hereinafter is not restricted in its operation to section 162 Cr.P.C. alone but also applies to the body of the Code, to hold otherwise would be to introduce a patent inconsistency between section 207 A and 162 of the code for by the former section in committal proceeding statements recorded U/s 162 Cr.P.C. are to be regarded as evidence.

Ukha Kolhe Vs The State of Maharashtra
A.I.R 1963 S.C 1531 : 1963 (2) Cri L.J. 418

Hearsay

Report of the Doctor not on the file Reference to it was made in the affidavits of Mahesh PW and Sub-Inspector which were both hearsay and not admissible under the Evidence Act in proof of the contents of documents. Primary evidence i.e. the report of the Doctor should have been summoned.

Mohd Ikram Hussain Vs The State of Uttar Pradesh
A.I.R. 1964 S.C. 1625 : 1964 (2) Cri. L.J. 590

History-sheet

Under Section 23 of the Police Act, 1861, the police is under a duty to prevent commission of offences and to collect intelligence affecting the public peace. For the efficient discharge of their duties, the police officers are empowered by the Punjab Police Rules, 1934 to open the history sheets of suspects and

(History Sheet-contd)

to enter their names in police register No. 10. These powers must be exercised with caution and in strict confirmity with tne rules The condition precedent to the opening of history sheet under Rule 23.9 (2) is that the suspect is a person "reasonably believed to be habitually addicted to crime or to be an aider or abettor of such person."

If the action of the police officers is challenged they must justify their action and must show that the condition precedent has been satisfied.

A habitual offender or a person habitually addicted to crime is one who is a criminal by habit or by disposition formed by repetition of crimes. Reasonable belief of the police officer that the suspect is a habitual offender or is a person habitually addicted to crime is sufficient to justify action under Rules 23.4 (3) (b) and 23.9 (2). Mere belief is not sufficient The belief must be based on reasonable grounds.

Note :—Appellant was involved in a number of litigations, civil and criminal he forged Railway tickets (on three different occasions). Appeal was dismissed

Dhanji Ram Sharma Vs Superintendant of Police North Distt., Delhi Police and others
A I.R. 1966 S C. 1766 (Page 1767/68) : 1966 Cri. L.J. 1486

Honesty

The presumption that a person acts honestly applies as much in favour of a Police officer as of other persons and it is not a judicial approach to distrust and suspect him without good grounds thereof. Such an attitude could go neither credit to the magistracy nor go to the public. It can only run down the prestige of the public administration.

Aher Raja Khima Vs State of Saurashtra
A.I.R. 1956 S C. 217 . 1956 Cri. L.J. 426

House-Trespass

If the purpose in committing the house trespass is the commission of an offence punishable with death, the house trespass becomes punishable under S. 449 of the Indian Penal Code. If the purpose in committing the house trespass is the commission of an offence punishable with imprisonment for life the house trespass is punishable under S. 450 of the Indian Penal Code Similarly, Ss. 451,454 and 457 will apply if the house trespass or lurking house trespass, or lurking house trespass by night or house breaking by night are committed for the purpose of the offence indicated in those sections. Whether or not the purpose was actually accomplished is quite irrelevant in these cases. Our conclusion, therefore, is that the fact murder was not actually committed will not affect the applicability of S.449 of tha Indian Penal Code

Matullah Sheih Vs The State of West Bengal
A.I.R. 1965 S C. 132 : 1965 (1) Cri. L.J. 126

Husband

The provisions of Section 498 of Penal Code are intended to protect the rights of the husband and not those of the wife.

Alamgir Vs State of Bihar
A.I.R. 1959 S.C. 436 : 1959 Cri. L.J. 527

Hypothetical Considerations

The verdict should not be interfered with or conviction U/s 302 IPC based on it altered, on hypothetical consideration not founded on any facts on record.

Ram Lochan Ahir Vs State of Bihar
A.I.R. 1963 S.C. 1074 : 1963 Cri. L.J. 170

Handwritings

Evidence of Photographs to prove writing or handwriting can only be received in evidence if the original cannot be obtained and the Photographic re-production is faithful and not faked or false.

Note :—It was received to prove the conspiracy of international smuggling racket where the offenders were tried in two different countries. The original letters were suppressed by accused.

Criminal appeal No 52 of 1964.

Decided on 14-12-67 DLJ 1968 S. N. 18. Page 30.

"I"

Identical

Offences under Section 5 (2) of Prevention of Corruption Act and section 409 of Penal Code are not identical. There can be no objection to a trial and conviction U/s 409 I.P.C. even if the respondent has been acquitted of an offence under S 5 (2) of the Prevention of Corruption Act 2 of 1947.

State of Madhya Pradesh Vs Veeieshwar Rao Agmhotri
A I.R. 1957 S C 592 1957 : Cri. L J. 892

Identification

(i) The appellant was Identified by eye-witnesses two and a half months after the event. *It is unsafe to accept this identification. It seems evident* that suspect must have been pointed out to the witness before and that of course destroy the value of investigation and Identification.

Muthuswami Vs State of Madras
A.I.R. 1954 S.C 4 1954 Cri. L J. 236

(ii) High Court has given clear finding that there were more than five persons and believed the eye-witnesses who identified two of them. **The mere fact that only two out of the band of attackers were satis factorily identified does not weaken the force of the finding that more than five were involved.** Use of Section 149 IPC was, therefore, justified.

Note :—In this case twenty four persons were the attackers. Sixteen out of them were acquitted by the trial court, five were acquitted by the High Court, one by Supreme Court in another appeal and the sentence of two was upheld.

Nar Singh and another Vs State of Uttar Pradesh
A.I.R. 1954 S.C. 457 : 1254 Cri. L J. 1313

(iii) That if after arranging the parade the police leave the field, so to say, and allow the identification to be made under the exclusive direction and supervision of the Panch witnesses, the statements of the identifying witnesses would

(*Identification-contd*)

be outside the purview of section 162 Cr.P.C.

Note :—(Appeal of the accused on other grounds was allowed).

Santa Singh Vs State of Punjab
A I.R. 1956 S C. 526 : 1956 Cri. L.J. 930

(iv) Failure to hold an identification parade does not make inadmissible the evidence of identification in court.

Kanta Prashad Vs Delhi Administration
A.I.R. 1958 S.C. 350 : 1958 Cri. L J. 698

(v) After the arrest of the assailants, seven of them were put up for identification. These seven were mixed with thirty-nine other persons. P.W.I picked out three out of seven suspects and also picked out six out of the remaining thirty-nine. Thus, in fact he made three correct identifications and made six mistakes at the identification parade.

Held :—That in a parade of this kind consisting of 46 persons in all in which there were seven suspects and in which nine persons were picked out, the probability is that even if a person who had not seen the murder were to pick out suspects by mere chance and would be able to place his finger on one or two of the suspects. No reliance can be placed on such an identification even though witness was disinterested and it also cannot be used as corroborative evidence.

Vaikuntam Chanderappa and others Vs State of Andhra Pradesh
A.I.R. 1960 S.C. 1340 : 1960 Cri. L J. 1681

(vi) When an eye-witness failed to pick out an accused both in the identification parade as well as in the COMMITTING MAGISTRATE'S COURT, it would be entirely incorrect to rely upon his belated identification in the Sessions Court. The evidence of such witness must be rejected.

Note :—(The rejection of the sole testimony of this witness and the absence of any other incriminating circumstance led the accused acquitted).

A.I.R. 1960 S C. 1340 : 1960 Cri. L.J. 1681

Identification By voice

(vii) Where the appellant is intimately known to Rakha Singh witness and for more than a fortnight before the date of the offence he had met the appellant accused on several occasions in connection with the dispute, it cannot be said that the identification of the assailant by the witness Rakha Singh, from what he heard and observed was so improbable as to accept his testimony of identification So there can be identification of the assailants by the gait and voice.

Kirpal Singh Vs The State of Utter Pradesh
A I R. 1965 S C. 712 : 1965 (1) Cri. L.J. 636

(viii) If a statement is relevant, an accurate tape record of the statement is also relevant and admissible. The time and place and accuracy of the recording must be proved by a competent witness and the voice must be properly identified.

Note :—Tape recording evidence was identified and admitted. Appeal was rejected.

Yusufalli Esmail Nagree Vs The State of Maharashtra
A I.R 1968 S.C. 147 (Jan Part)

Identity

It is not unusual for a witness to make mistake of identity when a large number of persons are concerned in committing a crime, so it is a question of fact and not of law.

Bhaiwad nepa Dana Vs The State of Bombay
A.I R. 1960 S.C. 289 : 1960Cri. L.J. 424

Ignorant

It is no defence merely to allege that the vendor was ignorant of the nature of substance or the quality of food sold by him. Servant is liable without proof of mensrea where the sale of the adulterated article is by servant

Sarjoo Prasad Vs The State of Uttar Pradesh
A.I.R. 1961 S.C. 631 : 1961 Cri. L.J. 747

Illegality

If there is a conviction for a charge not framed it is an illegality and not irregularity curable by the provisions of section 535 and 537 Cr. P. C.

A I R. 1955 S.C 274 : 1955Cri. L J. 721

Illegal gratification

(i) Mere fact that a person takes money in order to get a job for another person somewhere would not by itself necessarilly be an offence unless all the ingredients of that section are made out.

Note :—In this case it was not disclosed whether any public servant will be approached to render service to the complainant and who was the public servant on whom the accused had influenced.

Note :—The appeal of the State against the acquittal was dismissed.

Chandrika Prasad Tripathi Vs Shiv Prasad Chanpuria
A.I.R. 1959 S.C. 847 : 1959 Cri. L J. 1124

(ii) Appeal pending before The Joint Chief Controller of Import and Export, illegal gratification accepted by Assistant Controller of imports, an offence u/s 165 IPC is committed even though the accused had no function to discharge in connection with the appeal.

R G Jacob Vs Republic of India
A. I. R 1963 S.C. 550 : 1963 (1) Cri L J. 486

Immoral Traffic

(i) It is not necessary that the information received enabling a magistrate, under Section 20 of Suppression of Immoral Traffic in Women and Girls Act, to make the enquiry provided thereunder, should be only from a special police

(*Immoral Traffic-contd*)

officer designated under Sec. 13 but may be from any source.

The State of Uttar Pradesh Vs Kaushailiya
A.I R. 1964 S.C. 416 : 1964 (1) Cri. L.J 304

(ii) The jurisdiction U/s 20 of Immoral Traffic Act is not conferred on a magistrate as a person designated but is to be exercised by him in his capacity as a magistrate functioning within the limits of his territorial jurisdiction.

The State af Uttar Pradesh Vs Kaushailiya
A I.R. 1964 S.C. 416 : 1964 (1) Cri. L.J 304

(iii) Section 20 of Immoral Traffic Act does not infringe Article 14 of the Constitution and restriction imposed by the Provisions are reasonable and in public interest within Article 19 (5) of the Constitution.

A.I.R. 1964 S.C. 416 1964 (1) Cri. L.J. 304

(iv) It is obligatory upon the court which convicts a person of an offence under Section 3 (1) of the Suppression of Immoral Traffic in woman & Girls Act, 1956, to pass a sentence of imprisonment where the conviction is, in respect of the first offence, for a term not less than one year and not merely to a sentence of fine.

Stata of Maharashtra Vs Jugmander Lal
A.I.R. 1966 S C. 940 : 1966 Cri. L.J. 707

(v) Any contravention of the Provisions mentioned in Section 3 and 7 of Suppression of Immoral Traffic in Women and Girls Act (1956) amounts to a cognizable offence in view of section 14, whereas a proceeding under S. 18 is in no sense a Prosecution. It is a preventive measure. It is intended to minimise the chance of a brothel being run or Prostitution being carried on in premises near about Public places. Naturally, in the case of Prosecutions, a regular trial with a right of appeal is provided for. The enquiry Contemplated by S. 18 is summary in character.
Magistrate cannot choose to ignore the cognizable offence complained of under S. 3 of the Act and to have recourse to preventive measures provided under S. 18 of the Act. Such procedure is against the law and the magistrate cannot proceed against under S. 18 without first taking action U/s 3 of the Act.

A.C. Aggarwal S D.M Delhi and another Vs Mst Ram Kali
A.I.R. 1968 S.C. 1

Implied

If a Magistrate forms an opinion that no case exclusi ely triable by a court of Session but a less serious offence, which is within the competence of the Magistrate to try, is disclosed. This will amount to an implied discharge of that offence and the revisional power U/s 437 Cr.P.C. can be invoked although there is no express order of discharge.

Thakur Ram Vs The State of Bihar
A.I.R. 1966 S.C. 911 : 1966 Cri. L J 700

Imprisonment & Fine

The plain meaning of the words "shall, on conviction, be punishable for the first offence with imprisonment for a term which may extend to six months and with fine which may extend to rupees one thousand" would be that the

Court convicting a person of an offence under the Act **was bound to award a sentence consisting both of imprisonment and fine.** The words "may extend" precedidg "six months" and "rupees one thousand" respectively merely give discretion to the Court in so far as the extent of imprisonment or fine to be awarded is concerned and nothing more

State of Maharashtra Vs Jugmandar lal
A.I.R. 1966 S C. 940 (Para 2) : 1966 Cri. L J. 707

Income Tax

Where an assessee has been arrested and is being detained in Jail in execution of a warrant of arrest issued under section 13 of the Bombay City Land Revenue Act 1876 for the recovery of the demand certificate U/s 46 (2) of the Income Tax Act, no complaint can be made of infringement of Art-21, as these two sections constitute the procedure established by law.

Purshottam Govindji Halai Vs Sh. B.M. Desai Addl. Collector of Bombay
A.I.R 1956 S C. 20 1956 Cri.L.J. 129

Inconsistent Cases

The prosecution cannnot be permitted to lead evidence relating to inconsistent cases.

Note :—The alternatives presented for the prosecution were held not inconsistent

Sardul Singh Caveeshar Vs The State of Bombay
A.I.R. 1957 S.C 747 : 1957 Cri.L.J. 1325

Incriminating

The appellant had stated "I have thrown him in the "Bhaar" (furnace)". The courts below were disinclined to consider this as an incriminating circumstance against the appellant because the statement was made in anger. That the appellant made the statement appears to be beyond doubt and even if the statement was made in anger, it is a statement of considerable significance in the present case. The statement is tantamount to the appellant intimating to Shanker Lal that he had done away with the deceased and carried out his threat It is true that the deceased's body was not found in a furnance but in a well, but that is of little consequence, What is important is that soon after the deceased was found to be missing the appellant made a statement indicating that he had a hand in his disappearance by throwing him in a furnance.

Note :—Circumstances were found consistent with the guilt of the accused and the appeal of the accused was dismissed.

Pershadi Vs The State of Uttar Pradesh
A.I.R. 1957 S.C. 211 : 1957 Cri L.J. 324

Independent Evidence

(i) In India tendency to include the innocent with the guilty is peculiarly prevalent and it is very difficult for the court to guard against the danger. The only real safe guard against the risk of condemning the innocent with the guilty lies in insisting on independent evidence.

Kashmira Singh Vs The State of Madhya Pradesh
A.I R. 1952 S.C. 159

(Independent-Evidence)

(ii) **Independent witnesses not cited when available.** It is well settled that in a murder case, it is primarily for the prosecutor to decide which witnesses he should examine in order to unfold his story. Prosecutor must act fairly and honestly and must never adopt the device of keeping back eye witnesses only because their evidence is likely to go against the prosecution, if at the trial it is shown that persons who had witnessed the incident have been deliberately kept back, the court may draw an inference against the prosecution.

Note :—Interference by the Supreme Court under Article 136 of the Constitution was not called for as both the lower courts believed the oral evinedce. So appeal was dismissed.

Darya Singh Vs State of Punjab
A.I.R. 1965 S.C. 328 : 1965 (1) Cri.L.J. 350

Individual liability

Once it is established that the common intention was to commit murder, the question of separate individual liability in the context of private defence would be out of place.

Gurdatta Mal Vs The State of Uttar Ptadesh
A.I R. 1965 S.C. 257 : 1965 (1) Cri. L.J. 242

Infer

(i) It is not necessary to adduce direct evidence of the common intention. The common intention may be inferred from the surrounding circumstances and the conduct of the parties.

Note—The common intention against the appellant was inferred and the appeal was dismissed.

Rishideo Pande Vs State of Uttar Pradesh
A.I.R. 1955 S.C. 331 : 1955 Cri·L.J. 873

(ii) Where the accused was having the opportunity, to secret the documents and to commit the offence u/s 52 of Postal Office Act and Criminal misappropriation does not establish that the documents recovered from the joint possession of him (accused) and his father have come there through the accused. From the mere opportunity to commit the offence it cannot be inferred that the accused must have utilised the opportunity and committed the offence and so was in exclusive possession.

Note :—Appellant was acquitted.

Radha Krishan Vs State of Uttar Pradesh
1963 S.C. 822 : 1963 (1) Cri. L J. 809

(iii) Where all that was suggested by the defence that the article found in the godown were planted there by the police but it was not said that the godown was accessible to all and the police might have kept the sprit there, and the suggestion could not bear examination in view of the evidence, the magistrate was justified in those circumstances in drawing the inference that these articles were in the possession of the accused who was in possession of the godown. The Supreme Court did not disturb the decision.

Vijendrajit Ayodhya Prasad Goel Vs State of Bombay
A.I.R. 1953 S.C. 247 : 1953 Cri L J 1097

Inference

(iv) Supreme Court, would not be justified in disturbing the decision of the courts below on the ground that perhaps a different inference could also have been drawn from the facts found in the case.

A.I.R. 1953 S.C. 247 1953 Cri. L J. 1097

(v) It is the bounden duty of the prosecution to examine a material witness, particularly when no allegation has been made that, if produced, he would not speak the truth. Not only does an adverse inference arise against the prosecution case from his non-production as a witness in view of illustration (g) to section 114 of the Evidence Act, but the circumstances of his being with held from the court casts a serious reflection.

Note :—The appeal was allowed and conviction was set aside

Habeeb Mohammad Vs State of Hyderabad
A.I.R. 1954 S.C. 51 : 1954 Cri. L.J. 338

(vi) Where the only evidence against the accused person is the recovery of stolen property and although the circumstances may indicate that the theft and the murder must have been committed at the same time, it is not safe to draw inference that the person in possession of the stolen property was the murderer.

Sanwat Khan and another Vs State of Rajasthan
A.I.R. 1956 S.C. 54 : 1956 Cri L J 150

(vii) From the solitary circumstances of the unexplained recovery of the two articles from the house of the accused the only inference that can be raised is that they are either receiver of stolen property or were persons who committed theft, but it does not necessarily indicate that the theft and the murder took place at one and the same time.

A I.R. 1956 S.C. 54 : 1956 Cri. L J. 150

(viii) The appellant's total denial that he was ever in the service of Shanker Lal, that Shanker Lal had implicated him in the theft case, that he knew the deceased and that he pointed out the clothes of the deceased at the top of the brick-kiln, is a conduct inconsistent with his innocence These denials were made in order to disclaim all connections with Shanker Lal, with the deceased and with the latter's clothes. A court would, therefore, be justified in draw-

(Infer-contd)

ing an adverse inference from this against the appellant, in the circumstances of the case.

Pershadi Ve State of Uttar Pradesh
A.I.R. 1957 S.C. 211 . 1957 Cri. L.J. 328

(ix) Where the evidence of certain witnesses is not given by the prosecution an adverse inference can be drawn- The judge should direct the Jury to take the same. But If these directions have not been given, the defect is not l kely to cause any serious prejudice.

Sardul Singh Caveeshar Vs State of Bombay
A I R. 1957 S C. 747 : 1957 Cri. L.J. 1325

(x) In the absence of reasonable explanation, that the prisoner did not intend to stab in the stomach with a degree of force sufficient to penetrate that far into the body, or to indicate that he intended otherwise, it would be perverse to conclude that he did not intend to inflict the injury that he did.

If the prisoner can show that he did not, or if the totality of the circumstances justify such an inference, then, of course, the intent that the section requires in not proved. but if there is nothing beyond the injury and the fact that the appellant inflicted it, the only possible inference is that he intended to inflict it.

Note :—The appeal was dismissed and the conviction was maintained.

Talab Haji Hussain Vs Madhukar Purshottam Mondkar and another
A.I R. 1958 S.C. 376 1958 Cri. L J. 701

(xi) The prosecution should call all the material witnesses, and if the material witness has been deliberately kept back, then a serious reflection is cast on the properiety of the trial itself and the validity of the conviction resulting from it may be open to challenge.

It is not, however, that the prosecution is bound to call all witnesses who may have seen the occurrence and so duplicate the evidence. But apart from this, the prosecution should call material witnesses.

Since according to the prosecution case Raghbir arrived after the alleged offences were committed, he could not have given any material evidence about the prosecution case.

Note :—The appeal was dimissed. No adverse inference against the prosecution was drawn, conviction was upheld.

Narainand others Vs State of Punjab
A.I R. 1959 S.C. 484 : 1959 Cri. L.J. 537

(xii) Conviction of a person from the offence of criminal breach of trust may not, in all cases, be found merely on his failure to account for the property entrus-

(*Infer-contd*)

ted to him, or over which he has dominion, even when a duty to account is imposed upon him, but where he is unable to account or renders an explanation for his failure to account or renders, which is untrue, an inference of misappropriation with dishonest intent may readily be made.

Note :—Appeal was dismissed and the conviction was mai tained.

Jaikrishnadas Manohardas Desai and another Vs State af Bombay
A.I.R. 1960 S.C. 889 . 1960 Cri. L.J. 1250

(xiv) When governor, who has been defamed says that he leaves it to the Government to take such action as it think fit, the inference must be that he is personally indifferent whether a complaint is lodged or not. So the compaint by the public prosecutor or by the government cannot be lodged.

Gour Chandra Raut and another Vs The Public Prosecutor, Cuttac
A I R. 1963 S.C 1198 : 1963 Cri L.J. 194

(xv) Rule 6 under the Drugs and Magic remedies Act prescribes some conditions which have to be complied with by a person who sends lists of medicines to which the Act applies so as to bring his case within S.14 (1) (c), One requirement to which it refers is that the list should be printed in indelible ink the statement to which we have just referred. The other requirement is that the list should be sent to a registered medical practioner or wholesale or retail chemist. In relation to this requirement we have the statutory provision prescribed by S. 14 (1) (c) itself that it must be sent confidentially to a medical practioner. The fact that one of the condition prescribed by R. 6 has been complied with does not lead to the inference that the other conditions prescribed either by S. 14 (1) (c) or by R.6 have also been complied with.

Dr. Yash Pal Sahi Vs The Delhi Administration
A.I.R. 1964 S.C. 784 : 1964 Cri. L.J. 560

(xvi) The mere fact that the consumption of energy was much less prior to that day does not necessarily lead to the inference that there was dishonest abstraction of electricity energy. The prosecution must prove any perfected artificial means in existence as to raise the presumption of dishonest abstraction U/s 39 of the Electricty Act (1910).

Note :—Conviction U/s 39 of the Act was setaside.

Ram Chandra Prasad Sharma and others Vs State of Bihar and another
A.I.R. 1967 S.C. 349 : 1967 Cri. L.J 409

Infringment

Section 20 of Immoral Traffc Act contains reasonable restrictions imposed in public interest within the meaning of Art 19 (5) of the Constitution and,

therefore, do not infringe the fundamental rights of the respondents under Art. 19 (1) (d) and (e) thereof.

State of Uttei Pradesh Vs Kaushailiya, Rani etc
A.I.R. 1964 S.C. 416 : 1964 Cri. L.J. 304

Influx from Pakistan

The question whether an offence Under Section 7 of the Act Influx from Pakistan is left entirely to the subjective determination of the Government. The inference of reasonable suspicion rests in the discretion of Government. All that the Government is to do is to issue an order that a reasonable suspicion exists in their mind, and that an offence under section 5 has been committed. The section does not provide for the issue of a notice to the person concerned to show cause against the order nor is he afforded any opportunity clear his conduct of the suspicion entertained against him.

Ebrahim Vazir Mavat and others Vs State of Bombay and others
A.I.R. 1954 S.C. 229 : 1954 Cri. L.J 712

Information

(i) Information not included in the First Information Report and neither court relied on it ; Supreme Court would ignore it. ...nd the ...aten-

Ramajanam Singh Vs ...f Emp...
A I.R. 1956 S.C. 643 : 1956 Cr. L. 195...

(ii) Information of the accused about Gandasa, and then in the pre... witnesses, fetched the gandasa out of the water of the tank, this ...nd another that he had thrown the gandasa in the tank is information provable ...*I. J. 701* the Evidence Act and is admissible against the accused. ...al

State of Uttar Pradesh Vs Deoman Upadhy... on
A.I R. 1960 S.C. 1125 : 1960 Cri. L.J. ...lting

(iii) Ordinarily investigation is undertaken on information received by a... officer, the receipt of information is not a condition precedent for in...ho may tion. S. 157 of the Evidence Act prescribes the procedure in the n...om this, such an investigation which can be initiated either on inform... wise.

...ter the alleged offe-

Note —Investigation on information before obtaining the...erial evidence about magistrate is against the statutory Provision but no preju... to the appellant. Appeal of the State against acquittal ...nst the prosecution appellant was convicted u/s 5 (2) of Prevention of Corrupt...

State of Uttar Pradesh Vs Bha... Vs State of Punjab
A.I R. 1964 S.C. 221 : ...1959 Cri. L.J. 537

(iv) The expression used in S 20 of the Immoral Traffic in Wom... of trust may not, namely "on receiving information" is not expressly or by n... property entrus-

(*Information-contd*)

tion limited to information received from a special police officer. Information to the Magistrate may be from any source enabling the Magistrate to make enquiry into the offence.

The State of Uttar Pradesh Vs Kaushaihy, Rani etc
A I.R. 1964 S.C. 416 : 1964 Cri. L J. 304

(v) Where the information discloses a cognizable as well as a non-cognizable offence the police officer is not debarred from investigating any non-cognizable offence which may arise out of the same facts. He can include the non-cognizable offence in the charge-sheet which he presents for a cognizable offence Police investigated an offence u/s 7 of Essential Supplies Act along with section 420 IPC. The trial could proceed for said offence u/s 251 A Cr P C. and the investigation is valid.

Pravin Chandra Mody Vs State of Andhra Pradesh
A.I R. 1965 S C. 1185 1965 (2) Cri L.J. 250

Inherent power

(i) Inherent power u/s 561-A of the Criminal Procedure Code conferred on the High Court has to be exercised sparingly, carefully and with caution and only where such exercise is justified by the tests specifically laid down in the section itself. After all, procedure, whether criminal or civil, must serve the higher purpose of justice ; and it is only when the ends of justice are put in jeopardy by the conduct of the accused then the inherent power can and should be exercised in cases like the present.

Note :—In this case the bail of the appellant in a bailable offence was cancelled by the High Court The appeal against cancellation was dismissed.

Talab Haji Hussain Vs Madhukar Purshottam Mandkar and another
A.I.R. 1958 S.C. 376 : 1958 Cri. L J. 701

(ii) The inherent power of High Court under section 561 A Criminal Procedure Code cannot be exercised in regard to matters specifically covered by the other provisions of the Code.

R P. Kapur Vs State of Punjab
A.I.R. 1960 S.C. 866 : 1960 Cri. L.J. 1239

(iii) Where in disposal of appeal the High Court made sweeping and general observation against the entire police force of the state, though the case related to only one Police Officer, and the remaks were neither justified on the facts of the case, nor were they necessary for the disposal of the case before him. The case was held one of those exceptional cases where the inherent jurisdiction of the court should be exercised and the remaks should be expunged.

The State of Uttar Pradesh Vs Mohammad Naim J.
A I R. 1964 S.C. 703 : 1964 Cri. L J. 549

(Inherent Power-contd)

(iv) Every High Court, as the highest court exercising criminal jurisdiction in a State, has inherent power to make any order for the purpose of securing the ends of justice. This power extends to expunction or ordering expunction of irrelevant passages from a Judgment or order of a sub-ordinate Court and would be exercised by it in appropriate cases for securing the ends of justice. Being in extra-ordinary power, it will, however, not be pressed in aid except for remedying a flagrant abuse by a sub-ordinate Court of its powers such as by passing comment upon a matter not relevant to the controversy before it and which is unwarranted or is likely to harm or prejudice another.

Note :- In this case doctor sent his report to the magistrate in one bail application, the magistrate made remarks that the doctor was negligent, careless and no actual medical report has been sent It was held that these remarks are neither irrelevant nor without foundation, Moreover these remarks do not cause harm to the appellant So appeal was dismissed.

Dr. Raghubir Saran Vs State of Bihar and another
A I R. 1964 S.C 1 : 1964 (1) Cri. L J. 1

(v) The powers of investigation into cognizable offences are contained in Chapter XIV of the Code of Criminal Procedure. Section 154 which is in that Chapter deals with information in cognizable offences and S. 156 with investigation into such offences, and under these sections the police has the statutory right to investigate into the circumstances of any alleged cognizable offence without authority from a Magistrate, and this statutory power of the police to investigate cannot be interfered with by the exercise of power Under S. 439 or under the inherent power of the Court u/s 561-A of the Criminal Procedure Code.

Held .—The High Court was in error in interfering with the powers of the Police in investigating into the offence- The order of quashing the investigation started by the Police was set aside.

State of W. Bengal Vs N. Basak
A.I.R. 1963 S.C. 447 : 1963 Cri. L.J. 341

(vi) Inherent powers cannot be invoked to rehear the appeal which has been dismissed in default as S 369 read with 424 of the code specifically prohibit it. Inherent powers cannot be exercised where such is prohibited by the statute.

Sankatha Singh and others Vs State of Uttar Pradesh
A.I R. 1962 S C. 1208 : 1962 Cri. L.J. 288

(vii) Where the allegations in the First Information Report or the complaint, even if they are taken at their face value and accepted in their entirety, do not constitute the offence alleged ; in such cases no question of appreciating

(*Inherent Power-contd*)

evidence arises ; it is a matter merely of looking at the complaint or the First Information Report to decide whether the offence alleged is disclosed or not. In such cases it would be legitimate for the High Court to hold that it would be manifestly unjust to allow the process of the criminal court to be issued against the accused person.

But where the appellant cannot justly contend that on the face of the record the charge levelled against him is unsustainable. The appellant no doubt very strongly feels that on the relevant evidence it would not be reasonably possible to sustain the charge, but that is a matter on which the appellant will have to satisfy the Magistrate who takes cognizance of the case.

Note : —Appeal of Shr. Kapur against the Judgment of Punjab High Court, by which High Court refused to quash the proceedings U/s 561-A Cr. P C., was dismissed

R.P. Kapur Vs State of Punjab
A.I.R. 1960 S.C. 866 : 1960 Cri L.J. 1239

(viii) In a proper case the High Court has inherent power U/s 561-A Criminal Procedure Code to cancel the order of suspension of sentence and grant of bail to the appellant made U/s 426 Cr. P.C. and to order that the appellant be re-arrested and committed to Jail custody.

Pampapathy and another Vs State of Mysore
A I.R. 1967 S C. 286 : 1967 Cri L.J. 287

(xi) The inherent power of the High Court mentioned in S.561-A Criminal Procedure Code can be exercised only for either of the three purposes specifically mentioned in the Section. The inherent power cannot be invoked in respect of any matter covered by the specific provisions of the Code. It cannot be invoked if its exercise would be inconsistent with any of the specific provisions of the Code, and when the matter in question is covered by any specific provisions of the Code.

The Court can cancel the order of suspension of sentence and grant of bail to the appellant made under S.426, Criminal Procedure code and to order that the appellant be re-arrested and Committed to Jail-custody.

Pampapathy and another Vs State of Mysore
A.I.R. 1967 S.C 286 (Fobruary Part) · 1967 Cri. L.J. 287

Injury

(i) Whether the particular injury is fatal or not, is a question of fact. Where the 'post-mortem' reveals that the stomach and the omentum had herniated together and the omentum protruded through the hole which the injury had made. The pleura and the disphragm were both cut and the injury had

extended right upto the abdominal cavity the injury was sufficient to cause death in the ordinary course of nature.

Note :—(i) The injury was a result of a blow with a pen knife on the chest of the decased

Note :—The sentence of death was converted into that of transportation.

Narayanan Nair Raghavan Nair Vs State of Travancore-Cochin
A.I.R. 1956 S C. 99 : 1956 Cri. L.J. 278

Injury on Head

(ii) The injury was inflicted **with a hockey stick.** The head was fractured but the deceased lived for ten days.

The appellant is only 22 year old and not a doctor and can hardly be presumed to have had this special knowledge at the time he struck the blow. **All blows on the head do not necessarily cause death,** and as the deceased lived for ten days, it cannot be deduced from the nature of the injury and from the mere fact of death that the appellant had or should have had, the special knowledge that section 300 of the Indian Penal Code requires,

Admittedly, there was no premeditation and there was a sudden fight, so it is difficult to ascribe the necessary knowledge to the appellant; nor was the injury sufficient in the ordinary course of nature to cause death. So the offence falls under Section 304 Part II of the Indian Penal Code.

Note .—The appellant was acquitted on the charge of 302 but was convicted U/s 304 Part II of the Penal Code and was sentenced to 5 years R.I.

Willie (William) Slaney Appellant Vs State of Madhya Pradesh (Respondent)
A.I.R. 1956 S.C. 116 : 1956 Cri.L.J. 291

Injury Vital Part

(iii) Chand Singh held the deceased by the head and the appellant inflicted as many as 18 injuries on the arms and legs of the deceased with a gandasa.

The fact that no injury was inflicted on any vital part of the body of the deceased goes to show in the circumstances of this case that the intention of the appellant was not to kill the deceased outright. He inflicted the injuries not with the intention of murdering the deceased but causing such bodily injuries as, he must have known, would likely cause death, having regard to the number and nature of the injuries.

Note :—Death Sentence was converted to transportation.

Kapur Singh Vs State of Pepsu
A.I.R. 1956 S.C. 654 : 1956 Cri.L.J. 1265

(iv) Once the existence of the injury is proved the intention to cause it will be presumed unless the evidence of the circumstances warrant an opposite conclusion. But whether the intention is there or not is one of fact and not

(*Injury Vital Part-contd*)

one of law. Whether the wound is serious, is a totally separate and distinct question and had nothing to do with the question whether the prisoner intended to inflicted the injury in question.

Note :—Appeal was dismissed.

Talab Haji Hussain Vs Madhukar Purshottam Mondkar and another
A.I.R 1958 S.C. 465 : 1958 Cri.L.J. 818

Injuries cumulatively

(v) Where the doctor has not said that anyone or the injury was sufficient to cause death in the ordinary course of nature, court can look into the nature of the injuries found on the body of deceased and can come to any conclusion. Intention of the accused can also be inferred. Furthermore, even if none of the injuries by themselves was sufficient in the ordinary course of nature to cause death, **cumulatively**, they may be sufficient in the ordinary course of nature to cause death.

Note :—Prosecution evidence was accepted and the sentence of death was upheld.

Bhukhan and others Vs State of Uttar Pradesh
A.I.R. 1957 S.C. 474 · 1957 Cri.L.J 591

Injury vital Part

(iv) Appellant caused injuries by a chhura. The injury was inflicted on a vital part of the body but the fact remains that no vital organ of the body was injured thereby. It is not known how big the chhura was, and therefore, it cannot be said that it was sufficiently long to penetrate the abdomen deep enough to cause an injury to a vital organ which would in the ordinary course of nature be fatal, The chhura could not be recovered but the prosecution should at least have elicited from the witnesses particulars about its size.

The intention of murder cannot be inferred from the injury and the circumstances. The prosecution also from other evidence has not established that offence falls squarely u/s 307 I.P.C. So the offence amounts to simple injury with sharp-edged weapon u/s 324 I.P.C.

Sarju Parsad Vs State of Punjab
A. I. R 1965 S C. 843 : 1969 (1) Cri. L J. 766

(vii) In cases of attempt to commit murder by fire arm, the act amounting to commit murder is bound to be the only and the last act to be done by the culprit. Till he fires, he does not do any act towards the commission of the offence & once he fires, and something happens to prevent the shot taking effect, the offence under S. 307 is made out, Expressions, in such cases, indicate that one commits an attempt to murder only when one has committed the last act

necessary to commit murder. The existence of injury is not the requirement of the offence of attempting to murder.

Om Parkash Vs State of Punjab
A I.R. 1961 S.C. 1782 : 1961 Cri. L.J. 848

(viii) When the High Court rejected the plea of the self defence on the ground that it was inconsistent with the complaint Ex. D.E. It is unfortunate that the attention of the High Court was not drawn to the fact that the **portion of document** D. E (Complaint) on which it was basing its criticism against the defence theory of self defence had not been admitted in evidence. That no doubt is a serious infirmity in the reasoning and so the appellant is entitled to say that the conclusion of the High Court on this point of the defence case cannot be accepted without examination of its merits by Supreme Court.

Gurcharan Singh and another Vs State af Punjab
A.I.R. 1963 S.C. 340 : 1963 Cri. L.J 323

(ix) The number of blows would not necessarily prove that the accused was doing the act under **some hallucination**. Many sane men give more than the necessary stabs to their victim. The number of blows reflect the assailants vengeful mood One does not count his strokes when one commits murder.

Dayabhai Chhaganbhai Thakkar Vs State of Gujrat
A.I.R. 1964 S.C 1563 : 1964 (1) Cri. L.J. 472

Innocent

In India tendency to include the innocent with the guilty is peculiarly prevalent and it is very difficult for the court to guard against the danger. The only real safeguard against the risk of condemning the innocent with the guilty lies in insisting on independent evidence.

Note—Appeal on the charge of murder was allowed as there was no corroboration of accomplice from any independent witness.

Kashmir Singh Vs State of Madhya Pradesh
Cri. Appeal No. 53 of 1951 A.I R. 1952 S.C. 159

Inquest report

(i) It is questionable how for an inquest report is admissible except under section 145 of the Evidence Act.

Note—In this case injuries shown in the inquest report and the post mortem report were not tallying but were not confronted according to S. 145 of the evidence Act. So the benefit of it was not given to the accused.

A.I.R. 1955 S C. 216 : 1955 Cri. L.J. 572
Pandurang Vs State of Hydrabad

A statement in the inquest report is not evidence by itself and it certainly cannot be pitted against the evidence of the medical witness in court.

Surjan Vs State of Rajasthan
A.I.R 1956 S.C. 425 : 1956 Cri. L.J. 815

Inquiry

(i) Pw's evidence was rejected on the plea that their statements before the Committing magistrate were recorded under threat and duress. It was contended that a further enquiry to this fact ought to have been made by the magistrate before rejecting the same.

Held :—It is no part of a Court's duty to enter upon a roving enquiry in the middle of a trial on matters which are collateral to the main issue. The burden is on the person making these allegations to substantiate them and if he chooses to rely on evidence which does not satisfy the Court he must suffer the same fate as every other person who is unable to discharge an onus which the law places upon him suffers. So the contention is without force.

Bhagwan Singh Vs State of Punjab
A.I.R. 1952 S C. 214 : 1952 Cri. L J. 1131

(ii) If the Magistrate intends to use his powers under S. 207 CrPc and holds an inquiry from the beginning in a case not exclusively triable by the Court of Session, the only way in which the accused can know that he is holding an inquiry and not a trial is by the Magistrate informing that he is holding an inquiry under Ch. XVIII and not a trial. If he fails to do so, the accused can reasonably conclude that a trial is being held. It must, therefore be held that the proceedings before the Magistrate began as in the trial of a warrant case and if the Magistrate at a subsequent stage of the proceedings was of the view that the case should be committed to the Court of Sessions, he would have to act under S. 347 (1) of the Code.

Note :- The appeal was allowed and the order of commitment was quashed and the case was sent back for retrial. This irregularity is not curable U/s 537 Cr. PC. The opportunity to produce defence U/s 208 Cr.Pc has been wrongly denied, which ought to have been allowed by the trial Court.

Chhadami Lal Jain ete. Vs State of U P. and another
A.I.R. 1960 S.C. 41 : 1960 Cri. L.J. 145

(iii) The magistrate is not bound to accept the result of the inquiry U/s 202 Cr. P.C. or investigation or that he must accept any plea that is set up on behalf of the person complained against. The magistrate must apply his own judicial mind. On the plea of self-defence the complaint can be dismissed. It is not obligatory for the Magistrate to issue process against the accused and leave him (the person complained against) to establish his plea of self-defence at the trial.

(*Inquiry contd*)

Note :—The order of dismissal by the Magistrate on the basis of self defence was restored while that of High Court was set aside.

Vadilal Panchal Vs Dattatraya Dulaji Ghodigaorker
A.I.R. 1960 S.C. 1113 : 1960 Cri. L.J. 1499

(iv) The magistrate after taking cognizance could order investigaon by the police only U/s 202 and not under section 156 (3) of Cr. P.C. It would be proper in these circumstances to hold that though the Magistrate used the words "for instituting a case" in this order he was actually taking action under S. 202 that being the only section under which he was in law entitled to act.

Jamuna Singh Vs Bhadai Shah
A.I.R. 1964 S.C. 1541 : 1964 (2' Cri. L J. 468

Insanity

(i) Whether the accused was insane at the time of committing the offence as to be entitled to the benefit of section 84 of the Penal Code, can only be established from the circumstances which preceded, attended and followed the crime. Burden to prove is on the accused.

Even if the accused was not able to establish conclusively that he was insane at the time he committed the offence, the evidence placed before the court by the accused or by the prosecution may raise a reasonable doubt in the mind of the court as regards one or more of the ingredients of the offence, including mensrea of the accused and in that case the court would be entitled to acquit the accused on the ground that the general burden of proof resting on the prosecution was not discharged.

Note:—Appeal of the accused was dismissed as the plea of insanity was not proved.

Dahyabhai chhaganbhai Thakar Vs State of Gujarat
A.I.R. 1964 S C 1563, 1964 (2) Cri. L.J. 472

(ii) The number of blows would not necessarily prove that the accused was doing the act under some hallucination.

A.I.R. 1964 S C. .1563: 1964 (2) Cri. L.J.472

(iii) The burden of proof that the mental condition of the accused was, at the crucial point of time, such as is described by section 84 IPC lies on the accused who claims the benefit of this exemption (vide S. 105, Indian Evidence Act, illustration (a).

One doctor spoke of treating the patient two years before the occurrence and another two months after the occurrence. This evidence is of no use as the

defence is to prove insanity about the moment when the offence was committed and further it should relate not to the nature of sufferings but the mental condition of the accused at the time of the act. So the onus of proving insanity has not been discharged.

The accused bore ill will to Bismilla (deceased) and the act was committed at dead of night when he would not be seen, the accused taking a torch with him, access to the house of the deceased being obtained by stealth by scaling over a wall. Then again, there was the mood of exaltation which the accused exhibited after he had put her out of her life. It was a crime committed not in a sudden mood of insanity but one that was preceded by careful planning and exhibited cool calculation in execution and directed against a person who was considered to be enemy.

Note:—Acquittal was set aside. Appeal of the state was allowed.

State of M.P. Vs Ahmedulle
A.I.R. 1961 S.C. 998

(iv) It is not for the prosecution to establish that a person who strikes another with a deadly weapon was incapable of knowing the nature of the act or of knowing that what he was doing was either wrong or contrary to law. Every one is presumed to know the natural consequences of his act. Similarly every one is also presumed to know the law. These are not facts which the prosecution has to establish. It is for this reason that S. 105 of the Evidence Act places upon the accused person the burden of proving the exception upon which he relies.

Undoubtedly it is for the prosecution to prove beyond the reasonable doubt that the accused had committed the offence with the requisite mensrea. Once that is done a presumption that the accused was sane when he committed the offence would arise. This presumption is rebuttable and he can rebut either by leading evidence or by relying upon the prosecution evidence itself If upon the evidence adduced in the case whether by the prosecution or by the accused a reasonable doubt is created in the mind of the court as regards one or more of the ingredients of the offence including mensrea of the accused he would be entitled to be acquitted.

In the present case, there is evidence that up to the time of occurrence he (accused) has been doing his cultivation. There is no evidence on record to prove the characteristic to his habit from which it could be concluded that he was acting like an insane man. Before the commission of the crime he did not beat any person. On the other hand few months before the occurrence the accused admittedly picked up quarrel with Mangali and Bhaiya lal and had given threatening to make their family indistinct. An insane person could not have done so and it is not expected that he would have continued his cultivation properly like a sane person. Further, on the date of occurrence

(*Insanity-contd*)

many children were playing including his own cousin sister. But first of all he gave a sickle blow only to Babu Ram and other children of the family of Mangali and Bhaiya Lal and not to any other children. This shows that he did not act under the influence of insanity but only with some previous deliberation and preparation. It is further in evidence that he had given threatening to the witnesses. He beat Hiralal only when he tried to stop the act of beating of the children of Mangali and Bhaiya Lal's family with whom he had picked up quarrel previously. Lastly, a sense of fear prevailed in him and that is why he acted like a sane man by running and then escaping by jumping into Ganges river. So all these circumstances lead to one conclusion that he was not insane and had acted like a sane man and with some motive.

Note:—Death Sentence was up held.

Bhikari Vs State of U.P.
A.I.R. 1966 S.C. 1. 1966 Cri. L.J. 63

Instigation

(i) Instigating and bringing 'hartal' about a complete stoppage of work, business and transport with a view to promote lawlessness and disorder, is a ground on which an order can be made under section 3(2) of the Preventive Detention Act.

Keshav Nilkanth Vs The commissioner of Police Greater Bombay
A.I.R. 1957 S.C. 28 : 1957 Cri. L.J 10

(ii) The appellant is said to have instigated Jodha Singh to commit the offence of mischief under S. 436 I.P.C. Jodha Singh has been acquitted of the offence under S. 436. It can therefore, be said that he did not set fire to the hut of Baishaki. The appellant's instigating Jodha to commit the offence under S. 436 I.P.C. did amount to his abetting the offence under S. 436 and he would, therefore, be guilty of the offence of abetment under Sec. 115 I.P.C. since Jodha Singh did not commit the offence. It may be mentioned that Baishaki's hut was actually set on fire by some one, but another's setting fire not on the instigation of the appellant will not make the appellant guilty of abetment under S. 109 I.P.C. as the setting on fire by another was not in consequence of the abetment. The appellant will, therefore, not be guilty of the offence of abetment under S. 436 I P C. read with S. 109, but will be guilty of the offence of S 436 read with S.115 I.P.C.

Note:—Sentence from 436/109 to 436/115 was converted and reduced from 8 years R.I. to 4 years R.I.

Jmuna Singh Vs state of Bihar
A.I.R. 1967 S.C. 553 : 1967 Cri. L.J. 541

Institution

A dishonest abstraction of electricity is an offence against the Electricity Act

and hence the prosecution in respect of that offence would be incompetent unless it is instituted at the instance of a person named in section 50 of the Indian Electricity Act (1910).

Avtar Singh Vs State of Punjab
A.I.R. 1965 S.C. 666: 1965 Cri. L.J. 605

Instruction

Instructions cannot take the place of a notification.

Ajaib Singh Vs Gurbachan Singh
A.I R. 1965 S.C. 1619

Intention

(i) When the fatal injury was inflicted by the accused on the head of the deceased by only one lathi blow in the manner, prosecution alleges it could as well be that the act by which the death was caused was not done with the intention of causing death or such bodily injury as was likely to cause death. The act appears to have been done with the knowledge that it was likely to cause death within the meaning of Part II of Section 304 of the Penal Code.

Note:—Sentence was reduced from transportation to seven years R 1.

Chamru Budhwa Vs Sta.e of Madhya Pradesh
A.I.R. 1954 S.C. 652 : 1954 Cri L.J. 1676

(ii) The intention to kill is clear from the fact deposed to by the prosecution witnesses that accused tock care to lock the door from outside so that his servant P.W. 8 sleeping outside could be of no help to the deceased who had thus been trapped in his own cottage. Further more, when the villagers were roused from their sleep and were proceeding towards the cottage which was on fire, they were prevented from rendering any effective help to the helpless man, by the use of force against them by the accused.

Note:—The appeal was dismissed and conviction was up held.

Rawalpentu Venkalu Vs State of Hyderabad
A.I.R. 1955 S C. 171 : 1956 Cri. L.J. 338

(iii) In order to sustain the conviction U/s 218 IPC it is not sufficient that the entries are incorrect, but it is essential that the entries should have been made with the intention mentioned in that section.

Note:—In this case appellant was a Patwari, thus a public servant, framed the khasra of 358F in respect of plots No 170 and 74/1 of the village, which he knew to be incorrect with intent to cause undue loss to M.

Hald:—Wrong entries could not cause loss to M so the appellant cannot be convicted u/s 218 IPC. The prosecution failed to prove the necessary criminal intention. Appellant was acquitted.

Raghubansh Lal Vs State of Uttar Pradesh
A.I R. 1957 S.C. 486 : 1957 Cri.L.J. 595

(Intention-contd)

(iv) In the absence of evidence, or reasonable explanation, that the prisoner did not intend to stab in the stomach with a degree of force sufficient to penetrate that far into the body, or to indicate that his act was a regrettable accident and that he intended otherwise, it would be perverse to conclude that he did not intend to inflict the injury that he did.

If the accused can show that he did not, or if the totality of the circumstances justify such an inference, then, of course, the intent required by law is not proved. But if there is nothing beyond the injury and the fact that the appellant inflicted it, the only possible inference is that he intended to inflict it.

Once the existence of the injury is proved the intention to cause it will be presumed unless the evidence or the circumstances warrant an opposite conclusion.

Question of the presence of intention is one of fact and not one of law.

Note.—Appeal was dismissed.

Virsa Singh Vs State of Punjab
A.I.R. 1958 S.C. 465 : 1958 Cri. L.J. 818

(v) Whether there is an intention to offer insult to the Magistrate trying the case or not must depend on the facts and circumstances of each case.

Note —Intention to insult was found in this Case.

State of Madhya Pradesh Vs Revashankar
A.I.R. 1959 S.C. 102 : 1959 Cri. L.J. 251

(vi) Juxtaposition of the word 'otherwise' with the words- "corrupt or illegal means," and the dishonestly implicit in the word "abuse" indicate the necessity for a dishonest intention on the part of a public servant to bring him within section 5 (1) d of the Prevention Corruption Act.

M. Narayanan Nambiar Vs State af Kerala
A I R. 1963 S.C. 1116 : 1965 Cri. L J. 186

(vii) In order to establish an offence in relation to smuggled gold under section 167 (81) of Sea Customs Act. It is not necessary for the prosecution to prove by positive evidence that the intention of the accused was to defraud the Government of the duty payable on the gold or to evade the prohibition or restriction on the import thereon for the time being in force, when once it is proved that the gold is smuggled gold, it follows that it was brought into the country without payment of duty or in violation of the prohibition or restriction in force and whosoever brought it and whosoever dealt with it thereafter knowing it to be smuggled in the manner provided in the section must be held to have the intention of evading the payment of duty or violating the prohibition or restriction.

Soni Vallabhdas Liladhai Vs The Asst. Collectoi of Customs Jamnagar
A I.R. 1965 S.C. 481 . 1965 Cri. L.J. 490

(*Intention-contd*)

(viii) The object of the exactment Essential Commodities Act (1955) would not be defeated if mensrea is read as an ingredient of the offence. It would be legitimate to hold that a person commits an offence u/s 7 of the Act if he intentionally contravenes any order made under the Act. So construed the object of the act will be best served and innocent persons will also be protected from harassment.

Note :—In this case the accused was having a store of 885 mounds grain while under the act one cannot store more than 100 maunds. The accused had already applied for the licence of food grain. This application was not rejected before he was challanged. **Held:** As there was no mensrea, so no case against the accused is established.

Nathulal Vs State of Madhya Pradesh
A.I.R. 1966 S.C. 43 : 1966 Cri L.J 71

(ix) The Section 167 (8) of Sea Custom Act requires that there should have also an intent on his part to defraud the Government of the duty or to evade any prohibition or restriction. The possession of smuggled goods will raise the presumption of it.

Sachidananda Banerjee Asst. Collector of Customs Calcutta Vs Sita Ram
A.I.R. 1966 S.C. 955 : 1966 Cri. L.J. 712

(x) Accused caused injury to the private parts of a female child of seven and half months.

That the offence u/s 354 of Penal Code does not depend on the reaction of the woman subjected to the assault on use of criminal force. The words used in the section are that the act has to be done **'intending to outrage or knowing** it to be likely that he will thereby outrage her modesty. **This intention or the knowledge is the ingredient of the offence and not the women's feeling.**

Note :—The accused was awarded R I, for two years and a fine of Rs. 1,000/-

State of Puniab Vs Major Singh
A.I.R. 1967 S.C. 63 : 1967 Cri. L.J. 1

(xi) The disobedience of the order of the Superior Court for the purpose of contempt of court, by the subordinate court should be intentional, ignorance of the order of Superior court is good defence.

B.K. Kar Vs Honble the Chief Justice and his companion Justices of Orissa High Court
A.I R. 1961 S.C. 1367

(xii) The evidence indicates that while the appellant was trying to assault and the deceased intervened, the appellant finding himself one against two took out a knife and stabbed the deceased. It also indicates that the deceased at that stage was in a crouching position presumably to intervene and separate the

(*Intention-contd*)

two. It cannot be said with definiteness that the appellant aimed the blow at the particular part of the thigh knowing that it would cut the artery.

It may be observed that the accused did not used the knife while he was engaged in fight with D but when deceased came up he whipped out the knife. In these circumstances it cannot be said that the required intention of murder has been proved.

The knife was 5 inches to 6 inches in length including the handle, it was nontheless a dangerous weapon. When the appellant struck the deceased with the knife he must have known that such a blow in the abdomen or thigh was likely to result in the death of accused.

So the offence falls under S. 304 Part 1 of IPC. instead u/s 302 IPC.

Note :—Criminal appeal N. 21 1967, decided on 14.11. 1967.

Virsa Singh Vs State of Punjab approved
D.L.J. 1968 S.C. No 17 at Page 28

Interest of Justice

(i) Where the High Court scrutinised the evidence minutely and disclosed ample material on which a judicial mind could reasonable reach the conclusion and also found that it is expedient in the interest of justice that an enqniry be made. There is no reason for interfering with the High Courts discretion on that score.

M.S. Sheriff and another Vs State of Madras
A.I.R. 1954 S C. 397 1954 Cri. L J. 1019

(ii) It cannot be be said to be in the interest of justice that after a decision has been given against the complainant upon the full consideration of his case, he or any other person should be given another opportunity to have his complaint enquired into. Fresh complaint can be entertined where there is manifest error or manifest miscarriage of justice in the previous order or when fresh evidence is forth coming.

Pramatha Nath Tabukdar Vs Saroj Ranjan Sarkar
A.I.R. 1962 S.C. 876

Interested Witnesses

(i) The proposition that when the eye witnesses to the occurrence are interested persons there should be corroboration of their evidence by independent witnesses, cannot be of universal application.

Note:—Corroboration was found from the mere recovery of dead body from the place of first attack.

Mangal Singh Vs State of Madhya Bharat
A I.R. 1957 S.C. 199 : 1957 Cri. L.J. 325

(ii) The Driver of the Jeep of the deceased who was driving the jeep at the time of murder is not entirely disinterested witness and the court is right in insist-

(*Interested Witness-contd*)

ing on corroboration.

Note:—Appeal of two accused was accepted.

Vaikuntam Chandrappa Vs State of Andhra Pradesh
A.I.R. 1960 S.C. 1340 : 1960 Cri. L.J. 1681

(iii) It is difficult to accept the plea that if a witness is shown to be a relative of the deceased and it is also shown that he shared the hostility of the victim towards the assailant, his evidence can never be accepted unless it is corroborated on material particulars.

Note :—The appeal was dismissed as Evidence was believed.

Note :—See 'Relations' also.

Darya Singh Vs State of Punjab
A.I.R. 1965 S.C 3 28 (331) : 1965 Cri. L J. 350

Interfere

(i) Supreme Court can interfere only where High Court acts perversely or other wise improperly or has been deceived by fraud.

Note :—Appeal of the State against the judgment of acquittal was dismissed.

The State Government of Madhya Pradesh Vs Ram Krishna Ganaptrao Limsey
A.I.R. 1954 S.C. 20 : 1954 Cri. L.J 244

(ii) Where the legislature does not provide for an appeal, it is preposterous on the part of the appellant to invite the Supreme Court to interfer in special appeal.

Virinder Kumar Satyawadi Vs State of Punjab
A.I.R. 1956 S.C. 153 : 1956 Cri. L.J. 326

Interference

(i) Interference with finding of fact upon the merits or appeciation of the evidence is not open to reconsideration in appeal brought by Special leave, only flagrant error of law or procedure can be the grounds or that in arriving at finding of facts any miscarriage of justice had resulted to the accused

Note .— Appeal was dismissed.

A.J. Peiris Vs State of Madras
A.I.R. 1954 S C. 616 : 1954 Cri. L J. 1638

(ii) Supreme Court will not interfere on question of fact where the only point touching credibility of witnesses is in question the practice of the Supreme Court is not to interfere.

Moti Dass Vs State of Bihar
A.I.R. 1954 S C. 657 : 1954 Cri. L J. 1708

(iii) In appeal by special leave, the Supreme Court cannot consistently with its practice, cover itself into a third court of facts. On Question of appreciation of evidence, supreme Court will not interfere with the concurrent finding of fact arrived at by the Courts below.

Gurbakhsh Singh Vs State of Punjab
A.I.R. 1955 S.C. 320 : 1955 Cri. L.J. 869

(*Interference-contd*)

(iv) Supreme Court in a criminal appeal will interfere when there are exceptional grounds.

Virindar Kumar Satyawadi Vs State of Punjab
A.I.R. 1956 S C 153 : 1956 Cri. L.J. 326

(v) That the supreme court would be reluctant to interfere with the order of the High Court as respects to the disciplinary action be taken against a member of the Bar who had been guilty of professional misconduct.

Lalit Mohan Dass Vs The Advocate General-Orissa
A.I.R. 1957 S.C. 250

(vi) In an appeal filed by special leave under Article 136 of the Constitution it is not normally open to the appellant to raise questions of fact or to ask for interference with concurrent findings of fact, unless the findings are vitiated by errors of law or the conclusions reached by the courts below are so patently opposed to well established principles as to amount to miscarriage of justice.

Ratan Gond Vs The State of Bihar
A.I.R. 1959 S.C. 18 : 1959 Cri. L J. 108

(vii) Section 21 of the Prevention of Food Adulteration does not take away the power of the Magistrate if he has such power to commit, nor affect the jurisdiction of a court of Session to try a case committed to it by a Magistrate empowered to do so. Therefore Sessions Judge has full jurisdiction to try the case.

State of Uttar Pradesh Vs Khushi Ram
A.I.R. 1960 S.C. 905 : 1960 Cri. L.J. 1378

(viii) The Supreme Court will not interfere under Article 136 of the Constitution when three lower courts have held statement not caused by inducement, threat or promise.

Ram Lochan Ahir Vs State of West Bengal
A.I.R. 1963 S.C. 1074 : 1963 (2) Cri. L J. 170

(ix) The question of sentence is in the discretion of the trial court and would not ordinarily be disturbed by the High Court in appeal if it has been exercised judicially. There is still less reason ordinarily for Supreme Court to interfere with sentence passed by the Trial Court and confirmed by the High Court.

Smt. Mathri Vs State of Punjab
A.I.R. 1964 S.C. 986 : 1964 (2) Cri. L.J. 57

(x) The Supreme Court does not ordinarily interfere with a finding of the High Court based on appreciation of evidence, unless there are strong reasons for doing so.

Note :—In this case the appellate Court did not interfere on the question of fact.

A I.R. 1966 S.C. 945 : 1966 Cri L.J. 709

Interlocutory

(i) High Court would be reluctant to interfere with the proceedings at an interlocutory stage under the inherent powers.

Where the allegations in the First Information Report or the complaint, even if they are taken at their face value and accepted in their entirety, do not constitute the offence alleged. In such cases no question of appreciating evidence arises ; it is a matter merely of looking at the complaint or the First Information Report and to decide whether the offence alleged is disclosed or not. In such cases it would be legitimate for the High Court to hold that it would be manifestly unjust to allow the process of the criminal court to be issued against the accused person.

Under Section 561-A the High Court would not embark upon an enquiry as to whether the evidence in question is reliable or not. That is the function of the trial magistrate and ordinarly it would not be open to any party to invoke the High Court's inherent jurisdiction and contend that on a reasonable appreciation of the evidence the accusation made against the accused would not be sustained.

R.P. Kapur Vs State of Punjab
A I.R. 1960 S.C. 866 : 1960 Cri. L J. 1239

(ii) Interlocutory order which does not purport to decide the rights of the parties and relates only to the production of certain documents, is not a final order within the meaning of Article 134 (1) of the Constitution.

The State of U.P. Vs Col Sujansingh
A.I.R. 1964 S.C. 1897 :1964 (2) Cri L J. 94

Interim Relief

If on proof of certain conditions or grounds it is open to the High Court to set aside the order of detention made under Rule 3 of the Defence of India Rules ; and direct the release of the detenu there is nothing to see how it would be possible to hold that in a proper case, the High Court has no jurisdiction to make an interim order giving the detenu the relief which the High Court would be entitled to give him at the end of the proceedings.

If the Court has jurisdiction to give the main relief to the detenu at the end of the proceedings, on principle and in theory, it is not easy to understand why the court cannot give interim relief to detenu pending the final disposal of his writ petition. The interim relief which can be granted in habeas corpus proceedings must no doubt be in aid of, and auxiliary to, the main relief. It cannot be urged that releasing a detenu on bail is not in aid of, or auxiliary to the main relief for which a claim is made on his behalf in the writ petition.

Note:—Order of releasing on bail was upheld.

State of Bihar Vs Ram balak Singh Balak
A.I.R. 1966 S. C. 1441 : 1966 Cri. L.J. 1076

Interpretation

(i) In a Penal Statute it is the courts duty to interpret words of ambiguous meaning in a broad and liberal sense so that they will not become traps for honest, unlearned (in the law) and unwary men. If there is honest and substantial compliance with an arry and puzzling directions, that should be enough even if on some hyporcritical view of the law other ingenious meanings can be devised.

Note:—In this case word "Possession" was to be interpreted.

Saksaria Cotton Mills Ltd. Vs The State of Bombay
A.I.R. 1953 S.C. 278 : 1953 Cri L.J. 1116

(ii) The Petitioner who is a lay man, not experienced in the interpretation of documents, can hardly be expected without legal aid, which is denied to him, to interpret the grounds in the proper sense. Surely it is, upto the detaining authority to make his meaning clear beyond doubt without leaving the person detained to his own sources for interpreting the grounds.

Note :—Grounds were vague, so appeal was allowed.

Dr. Ram Krishan Bhardwaj Vs The State of Delhi and others
A.I.R. 1953 S C. 318 : 1953 Cri. L J. 1241

(iii) The courts have primarily to look at the language employed in the section and give effect to it.

The word 'obtains' in S. 5 (1) (d) of the Prevention of Corruption Act (1947) does not eliminate the idea of acceptance of what is given or offered to be given, though it connotes also an element of effort on the part of the receiver.

Ramkrishan Vs The State of Delhi
A.I.R. 1956 S.C. 476 · 1956 Cri. L.J. 857

(iv) The presumption that the same words are used in the same meaning is, however, very slight, but it is proper if sufficient reasons can be assigned to construe a word in one part of the Act in a different sense from that which it bears in another part of the Act

Shamrao Vishnu Parulekar Vs The District Magistrate Thana (Bombay)
A.I.R. 1957 S.C. 23 : 1957 Cri. L.J. 5

(v) If in construing the section the court has to supply some words in order to make the meaning of the statute clear, it will naturally prefer the construction which is more in consonance with reasons of justice.

Ramaswamy Nadar Vs The State of Madras
A.I.R. 1958 S.C. 56 : 1958 Cri L J. 228

(vi) The true principle is that the sound interpretation and meaning of the statute,

(*Interpretation-contd*)

on a view of the enacting clause, saving clause and provison, taken and construed together, is to prevail.

Tahsildar Singh Vs State of U.P.
A.I.R. 1959 S.C. 1012 : 1959 Cri. L J. 1231

(vii) If the words of the statute are in themselves precise and unambiguous then to expound those words, natural and ordinary sense be applied.

The word "shall" in S. 207 A sub. S, (4) of the Cr. P C. imposes a peremptory duty on the magistrate to take the evidence, but the nature of the said evidence is clearly defined thereafter. The clause "as may be produced by the prosecution as witnesses to the actual commission of the offence alleged" governs the words "Such persons", with the result that the duty of the magistrate to take evidence is only confined to the witnesses produced by the prosecution.

Shri Ram Vs State af Maharashtra
A.I.R. 1961 S.C. 674 : 1961 (1) Cri. L J. 760

(viii) It is well settled that if certain provisions of law construed in one way would make them consistent with the constitution and another interpretation would render them unconstitutional, the court would lean in favour of the former construction.

Kedar Nath Singh Vs State of Bihar
A.I.R. 1962 S.C. 955 · 1962 (2) Cri. L J. 103

Interpretation Of Statutes

(ix) The proceedings of the legislature cannot be called in aid for constructing a section. The statement of objects and reasons is not admissible in evidence for constructing a section.

Jailal Vs The Delhi Administration
A.I.R 1962 S.C. 1781

(x) Article 359 of the Constitution is capable of only one construction. The article should be interpreted in the light of the back ground supplied by the comprehensive examination of the respective provisions contained in Article 358 and 359 (1) and (2).

Makhan Singh Jarrikha Vs State of Punjab
A.I.R. 1964 S C. 381 : 1964 (1) Cri.L.J. 269

(xi) The interpretation, that the language in certain Sections of a statute cannot be regarded as strictly accurate such an interpretation is not permited for "the words" of an Act of Parliament, must be construed so as to give them sensible meaning. The words ought to be construed utresmagis valeant quam

Pureat. Section 39 of the Electricity Act provides for punishment as it makes dishonest abstraction a theft under the Penal code so the punishment of imprisonment prescribed in the code be awarded.

Avtar Singh Vs State of Punjab
A.I R. 1965 S.C. 666 : 1965 (1) Cri.L.J. 605

(xii) Section 201 of IPC. is clumsily drafted but the expression "knowing or having reason to believe" in the first paragraph and expression "knows or believe" in the second paragraph are used in the same sense.
It is difficult to hold that the minor offence of screening an offender under Section 201 is punishable more severely than the main offence committed by the main offender

Roshanlal Vs The State of Punjab
A.I.R. 1965 S.C. 1413 : 1965 (2) Cri.L.J. 426

Intoxication

The court must attribute to the intoxicated man the same knowledge as if he was quite sober but so far as intend or intention is concerned the court must gather it from the attending general circumstances of the case paying due regard to the degree of intoxication. ?

Was the man beside his mind altogether for the time being ?
If so it would not be possible to fix him with the requisite intention. But if he had not gone so deep in drinking, and from the facts it could be found that he knew what he was about, courts can apply the rule that a man is presumed to intend the natural consequences of his act or acts.

Note :—(i) The appellant who was very drunk and intoxicated asked the young boy to step aside a little so that he may occupy a convenient seat but the boy did not move. The appellant whiped out a pistol and he shot the boy in the abdomen. The injury proved fatal.

(ii) Held that the offence was not reduced from murder to culpable homicide not amounting to murder under the second part of Section 304 of Penal Code by reason of the provisions of Section 86 of the Code. Sentence u/s 302 IPC. was maintained.

Basdev Vs State of Pepsu
A.I.R. 1956 S.C. 488

Investigation

(i) Where the cognizance of the case has in fact been taken and the case has proceeded to termination, the invalidity of the precedent investigation does not vitiate the result, unless miscarriage of justice has been caused thereby, otherwise irregularity is curable.
When the attention of the Court is called to such an illegality at a very early

(*Investigation-contd*)

stage it would not be fair to the accused not to obviate the prejudice that may have been caused there by, appropriate orders, at that stage but to leave him to the ultimate remedy of waiting till the conclusion of the trial and of discharging the somewhat difficult burden under Section 537, Cr P.C. of making out that such an error has in fact occasioned a failure of justice.

Note :—The case was sent back for re-trial to the Special Judge.

(ii) The granting of permission authorising an officer of lower rank to conduct the investigation in a case u/s 5 (2) of Prevention of Corruption Act, is not to be treated by a magistrate as a mere matter of routine but it is an exercise of his judicial discretion.

H.N. Rishbud Vs State of Delhi
A.I R. 1955 S.C. 196 · Cri.L J. 526

(iii) An empty cartridge case and some blood-stained earth are alleged to have been recovered from the place of occurence by the police on the 20th of September when they went there for investigation after receipt of the First information from Uttam Singh (PW.16)

The sealed parcel of the earth was sent to the Chemical Examiner at Kasauli on the 11th October, 1954, and the sealed parcel of the empty cartridge case was sent to Dr. Goyle as late as the 27th October, 1954.

This inordinate delay raises much suspicion and has given rise to the suggestion on the part of the accused made in the course of the cross-examination of the Sub-Inspector that "the empty cartridge case ultimately sent to the Expert relates to a cartridge that was fired by them at the Police Station and is not the one recovered at the spot.

The memo relating to the recovery of the empty cartridge case is not attested by any independent witness.

The accused though actually arrested on the 14th September was brought to the Police Station on the 21st September but was not interrogated by the Sub Inspector till the 26th of September.

Held that the above suspicious features throw doubt on the bonafides of the investigation. The delay renders it unsafe to hold that the case of the prosecution had been established beyond reasonable doubt.

Note .—The appeal was allowed and the conviction of death sentence confirmed by the High Court was set aside.

Santa Singh Vs State of Punjab
A.I.R. 1956 S.C. 526 : 1956 Cri.L.J. 930

(iv) Section 162 of the Criminal Procedure Code applies to investigations which had been conducted by the Bombay city police after the first August, 1951

(*Investigation-contd*)

and would not have a retrospective operation because the investigation conducted upto 1st August, 1951 by the Bombay City Police would certainly not be investigation under Chapter 14 of the Criminal Procedure Code. So the questionas to admissibility in evidence of the statements made in thecourse of investigation under the Bombay City Police Act IV of 1902 wouldhave to be consideredin the light of provisions of Section63 of that Act and not that of Section162 of the Criminal Procedure Code.

Ram Kishan Mithanlal Vs State of Bombay
A.I.R. 1955 S.C. 104 : Cri. L.J. 196

(v) Investigation is certainly not an inquiry or trial before the court and the fact that there is no specific provision either way in Chapter XLV with respect to omission or mistake committed during the course of investigation except with regard to the holding of an inquest is a sufficient indication that the legislature did not contemplate any irregularity in investigation as of sufficient importance to vitiate or otherwise form any infirmity in the inquiry or trial.

Failure to send copies of diary to the superior officer every day by the police station House officer cannot be considered unworthy of credit.

Niranjan Singh Vs State of Uttar Pradesh
A.I.R. 1957 S.C. 142 : 1957 Cri. L.J. 294

(vi) Where objection that the investigation had been made by an officer below the rank of Deputy Superintendent of Police in contravention of the provisions of the prevention of Corruption Act had not been raised before commitment court, trial court and the High Court, it can not be allowed to be raised before the Supreme Court in appeal by Special Leave.

Din Dayal Vs The State of U.P.
A.I.R. 1959 S.C. 831 : 1959 Cri L.J. 1120

(vii) Magistrate is not bound to take cognizance when a complaint is filed and the word 'May' does not connote 'must'. He may send the case u/s 156 (3) Cr. P. C. for police investigation.

Keki Bejonji Vs State of Bombay
A.I.R. 1961 S.C. 986

(viii) If the Police Officer concerned thought that the case should be investigated by the C.I D. even though for a reason which does not appeal. It cannot be said that the procedure adopted was illegal.

R. P. Kapur Vs Sardar Partap Singh
A I.R. 1961 S.C. 1117

(*Investigation-contd*)

(ix) The question whether investigation had commenced or not is a question of fact and it does not depend upon any irregularity committed in a matter of recording the first information report by the concerned police officer.

K.M. Nanavati Vs State of Maharashtra
A.I.R. 1962 S.C. 605 : 1962 (1) Cri. L J. 521

(x) The powers of investigation into cognizable offences are contained in Chapter XIV of the Code of Criminal Procedure. Section 154 which is in that Chapter deals with information in cognizable offences and Section 156 with investigation into such offences and under these sections the police has the statutory right to investigate into the circumstances of any alleged cognizable offence without authority from a Magistrate and this statutory power of the police to investigate cannot be interfered with by exereise of power under Section 439 or under the inherent power of the court under Section 561-A of the Criminal Procedure Code.

Note :—Order of quashing investigation passed by High Court was set aside. Investigation was ordered to procced in accordancce with law.

State of West Bengal Vs S.N. Basak
A.I.R. 1963 S.C. 447 : 1963 (1) Cri. L.J. 341

(xi) The entire investigation was done by a Sub-Inspector of police and thereafter the case under Sections 409/406 of the Indian Penal Code was instituted against the appellant, his brother and the Executive Officer. That case was later withdrawn and it was thereafter the required sanction was granted for the prosecution of the appellant and his brother under Section 5 (2) of the Prevention of Corruption Act and investigation was made as required by Section 5-A. But the evidence shows that this investigation merely consisted of this that the duly authorized investigating officer went through the papers of the earlier investigation and decided to file four prosecutions as already indicated on the basis of the earlier investigation.

If there was irregularity in the investigation and Section 5-A was not complied with in substance, the trials cannot be held to be illegal unless it is shown that miscarriage of justice has been caused on account of the illegal investigation.

Munna Lal Vs State of Uttar Pradesh
AI.R. 1964 S.C. 28 (Page 31), 1964 (1) Cri. L.J.11

(xii) Sub Inspector of Police proceeded to the spot of the offence, ascertained the relevant facts by going through the Railway records and submitted a report of the said acts, and said acts constituted an investigation.

Cherufin Gregory Vs State of Bihar
A.I R. 1964 S.C. 205 : 1964 (1) Cri.L.J· 105

(xiii) Ordinarily investigation is undertaken on information received by a Police

(*Investigation-contd*)

Officer, but the receipt of information is not a condition precedent for investigation.

It is manifest from the section 5/A of Prev. Corruption Act that an officer **below the rank of a Deputy Superintendent of Police cannot investigate an offence punishable under the provisions of the Act without the order of a Magistrate First Class.**

In this case the police officer realized his duty after he made some investigation of the offence and hastened to rectify the defect.

No attempt has been made to point out any defect or contravention of the provisions of the Code of Criminal Procedure in the matter of investigation after the granting of the said permission.

It is necessary for the accused to throw a reasonable doubt that the prosecution evidence is such that it must have been manipulated or shaped by reason of the irregularity in the matter of investigation, or that he was prevented by reason of such irregularity from putting forward his defence or adducing evidence in support thereof. But where the prosecution evidence has been held to be true and where the accused had full say in the matter, the conviction cannot obviously be set aside on the ground of some irregularity or illegality in the matter of investigation.

State of Uttar Pradesh Vs Bhagwant Kishore Joshi
A.I.R. 1964 S.C. 221 (Page 225/226) : 1964 (1) Cri.L.J : 140

(xiv) The Magistrate after taking cognizance could order investigation by the police only u/s 202 and not u/s 156(3) of the Criminal Procedure Code.
It would be proper in these circumstances to hold that though the Magistrate used the words "for instituting a case" in his order he as was actually taking action under Section 202 that being the only section under which he was in law entitled to act.

Jamuna Singh Vs Bhadai Shah
A.I.R. 1964 S C. 1541 : 1964(2) Cri.L.J. 468

(xv) The Foreign Exchange Regulation Act is a Special Act and it provides under Section 19-A for the necessary investigation into the alleged suspected commission of an offence under the Act, by the Director of Enforcement. The provisions of the Code of Criminal Procedure, therefore, will not apply to such investigation by him.

Nilratan Sircar Vs Lakshmi Narayan
A.I.R. 1965 S.C.1 : 1965 (1) Cri L.J. 100

(xvi) The magistrate cannot compel the Police to form a particular opinion on the investigation and to submit a report, according to such opinion. That will be

(*Investigation-contd*)

really encroaching upon the sphere of the Police and compelling the Police to form an opinion so as to accord with the decision of the Magistrate.

The investigation under the Code, takes in several aspects, and stages, ending ultimately with the formation of an opinion by the Police as to whether, on the material covered and collected, a case is made out to place the accused before the magistrate for trial, after the submission of either a charge-sheets or a final report is dependent on the nature of the opinion, so formed. The formation of the opinion that no case against the accused is made out, is a final step in the investigation, and that final step is to be taken only by the Police and by no other authority.

Roopchand Lal and another Vs State of Bihar and another
A.I.R. 1968 S.C. 117 (Jan. Part)

Iron & Steel (Control) order, 1956.

There is no provision in the control order requiring that iron or steel acquired under the control order should be utilised within a specified time. If it had been the intention to include keeping or storing within the word 'Use' there would have been some provision regarding the period during which it would be permissible to keep or store the iron, for it is common knowledge that building operations take some considerable time and are some times held up for shortage of material or other reasons. Further the word 'use' must take its colour from the context in which it is used. In Cl. 7 the expression "Use.........in accordance with the conditions contained suggests something done positively e.g., utilisation or disposal. Mere 'None-use' is not included in the word 'use'.

State of Uttar Pradesh Vs Romagya Sharma Vaidya
A.I.R. 1966 S.C. 78

Irregularity

(i) Where in a trial for an offence of cheating the charge does not specify the manner and the mode in which the cheating has been done, it is vague, but the vagueness of the charge is only an irregularity which has not materially prejudiced the accused, So the trial is not vitiated.

K. Damodaran Vs The State of Travancore-Cochin
A I.R. 1953 S.C. 462 : 1953 Cri.L.J. 1928

(ii) Where the particulars and details were all on the record before the charges were framed and the accused could not have been misled in any way and in fact no grievance was made by him or his advocate on that score before the special tribunal. The irregularity complained of did not cause any real prejudice to the accused.

A. [illegible] 953 S.C. 462 : 1953 Cri. L.J. 192[illegible]

(Irregularity contd)

rank of Assistant or Deputy Superintendent of Police or by sub-divisonal magistrate is merely directory and not mandatory. Non-compliance of this order, therefore, does not make the investigation of the case illegal.

The State of Andhra Pradesh Vs N. Venugopal
A.I.R. 1964 S.C. 33 : 1964 (1) Cri.L.J. 16

(xv) It is necessary for the accused to throw a reasonable doubt that the prosecution evidence is such that it must have been manipulated or shaped by reason of the irregularity in the matter of investigation, or that he was prevented by reason of such irregularity from putting forward his defence or adducing evidence in support thereof. But where the prosecution evidence has been held to be true and where the accused had full say in the matter, the conviction cannot obviously be set aside on the ground of some irregularity or illegallty in the matter of investigation.

State of Uttar Pradesh Vs Bhawant Kishori Joshi
A.I.R. 1964 S.C. 221 1964 · (1)Cri L.J. 140

(xvi) Where the public servant is not specified in the charge that would only mean that there is defect in charge and such a defect would be curable under S. 537 of the Code of Criminal Procedure unless such error or omission or irregularity or misdirection has in fact occasioned a failure of justice.

The State of Maharashtra Vs Jagat Singh Charan Singh Arora
A I.R. 1964 S.C. 492 : 1964 (1) Cri. L J . 432

"J"

Jail

(i) Recording of confession in jail instead of the Court house where it should have been recorded, is an irregularity, but this irregularity does not affect the voluntary character of the confession.

Hem Raj Vs The State of Ajmer
A.I R. 1954 S.C. 462 1954 Cri.L.J. 1313

(ii) As the accused had already been in jail for a little less than three years, which period of imprisonment might have been enough as a sentence U/S 392 IPC, retrial should not be ordered in the interest of justice. The evidence against the accused, not being above serious criticism, they should be acquitted.

Ram Shanker Singh Vs State of Uttar Pradesh
A.I.R. 1956 S C. 441 : 1956 Cri.L J. 822

(iii) The confession may ordinarily be recorded in open court and during court hours unless for exceptional reasons it is not feasible to do so. A confession taken in jail without any adequate reason, therefore, and in disregard of the instructions contained in the Government order, is improper.

Note :—Such confession was not relied upon for the offence of murder so the appellants were acquitted u/s 302/34 and 201/34 IPC.

Ram Chandera Vs State of Uttar Pradesh
A.I.R. 1957 S.C. 381 : 1957 Cri.L.J. 557

Jail Superintendent

(iv) If the jail superintendent actually himself punished the accused who commits the breach of jail discipline, he cannot under rule 41 of Punjab Communist Detenus Rules refer the case again to the magistrate, Where he refers, the prosecution before the magistrate would be illegal.

Maqbool Hussain Vs State of Bombay
A.I.R. 1953 S C. 325 : 1953 Cri.L.J. 1432

(*Joint Trial-contd*)

nature of the accusation made by the Prosecution and if the court is Prima-facie satisfied that the accusation made shows that several persons charged of different offences and that said offences appear to have been committed in the course of same transaction, their joint trial can and should be ordered. Validity of joint trial cannot be questioned merely because accusation is not made out So, it cannot be said that the framing of the charge of conspiracy was not justified and that the trial of the appellant jointly along with the other persons was either improper or illegal.

Kadiri Kunpapammad Vs The State of Madras
A.I.R. 1960 S.C. 661 : 1960 Cri. L.J. 1013

(iii) Where two offenders are charged U/s 302 and 307 of Penal Code the offence being of the same kind, one joint trial of those offences is justified U/s 234 of Cr. P.C.

Banswarc Vs State of Uttar Pradesh
A.I.R. 1962 S C. 1198 : 1962 Cri. L J. 278

Joint possession

Prosecution proving that articles found in almirah of house in which the accused lived jointly with his father and of which key was furnished by the father. Evidence is not sfficient to infer exclusive possession of postal articles of accused.

Note :—Appeal was allowed.

Radha Kishan Vs State of Uttar Pradesh
A.I.R. 1963 S C. 822 : 1963 (1) Cri. L.J. 809

Judicial Tribunal

(i) The Sea custom Authorities are not a judicial tribunal and the adjuding of confiscation, increased rate of duty or penality under the provisions of Sea Customs Act do not constitute a judgment or order of a court or of a judicial tribunal necessary for the purpose of supporting a plea of double jeopardy.

Maqbool Hussain Vs State of Bombay
A I.R. 1953 S.C. 325 : 1953 Cri.L.J. 1432

(ii) The satisfaction of the authority which justified the use of the power under Rule 30, and confirmation of the order of detention are not subject to judicial review, for the order of detention withont trial is preeminently an executive act. The subjective detention of the detaining authority is a condition of the making of the order, and if that condition is shown to exist, the Courts have no power to enquire into the sufficiency of material on which the order is made or the propriety or expediency of making the order. It is the satisfaction of the prescribed authority which is determinative of the

(*Judicial Tribunal-contd*)

validity. That. howevere, does not exclude the Courts power to investigate into the compliance with the procedural safeguards imposed by the statute, or into the existence of power, or into a plea that the order was made mala fide or for a collateral purpose. That howevere, is not judicial review of the order.

Sadhu Singh Vs Delhi Adm.
A.I R 1966 S.C. 91 (Page 94)

(ii) That the function entrusted to the authority under R. 30-A (a) of Defence of India Rules as distinguished from the powre under R. 30 (1) (b) is quasi judicial and the decision which it has to arrive at cannot be anything other than a quasi judicial decision.

P.L. Lakhanpal Vs The Union of India
A.I.R. 1967 S C. 1507 : 1967 Cri L.J 1390

Judgment

(i) Judgment is the first judicial act which the court performs after the hearing. It is the final operative act which is formally declared in open court with the intention of making it the operative decision of the court.

Upto the moment the judgment is delivered judges have the right to change their mind. The judges, who deliver the judgment or cause it to be delivered by a brother judge, must be in existence as a member of the court at the moment of delivery so that he can, if necessary, stop delivery and say that he has changed his mind. There is no need for him to be physically present in court but he must be in existence as a member of the court

Appeal was heard by two Judges of the High Court One of them prepared the judgment and send the same to the brother Judge after signing every page, but dies before the delivery of the judgment. Judgment is pronounced by the other judge.

Note :– Judgment pronounced after the death is not a valid judgment because the other member or the Bench died before it would be delivered.

Note :—Case was sent back to the High Court for rehearing and delivery of the proper judgment.

Surendra Singh Vs State of Uttar Pradesh
A.I.R. 1954 S C. 194 :

(ii) It is the duty of the court to give a summary of the evidence of the material witnesses and to appraise the evidence with a view to arriving at the conclusion whether testimony of the witness should be believed or not.

Note :—Judgment, though mechanical, but was upheld.

Afteb Ahmad Khan Vs State of Hyderabad
A.I.R 1954 S.C. 436 : 1954 Cri. L.J. 1155

(Judgment-contd)

(iii) It is not open to a Judge to base his conclusion on his observation and views, and incorporate the same in the Judgment Magistrates view or observation cannot take the place of evidence.

Pritam Singh Vs State of Punjab
A.I.R. 1956 S.C. 415 : 1956 Cri L.J. 85

(iv) Judgment delivered by the High Court having no indication that the learned judges considered the character of approver's evidence and reached the conclusion that it was the evidence given by a reliable witness, suffers from a serious infirmity since the judges have failed to address themselves to this initial question

Note :—The appeal was allowed and conviction was set-aside.

Sarwan Singh Vs The State of Punjab
A.I.R. 1957 S.C. 637 : 1957 Cri.L.J. 1014

(v) The fact, that the prosecution has failed to prove by other evidence the guilt of the accused, does not entitle the court to say that the accused has succeeded in proving that he did not commit the offence.

Note :—Conviction was upheld on the basis of presumption enshrined U/s 5 (3) of the Prevention of Corruption Act.

Sajjan Singh Vs State of Punjab
A.I.R. 1964 S.C 464 : 1964 (1) Cri L.J. 310

Jurisdiction

(i) Accused cannot be tried in any court in India for offence committed in Mailasi (District Multan) in Nov, 1947 and the Government held no power under S. 188 Cr.P C to accord sanction to his prosecution The subsequent acquisition by Ram Narain of Indian domicil cannot affect the question of jurisdiction of courts for trying him for crimes committed by him while he did not possess an Indian domicil.

Note :—Appellant cannot be tried for that offence.

Central Bank of India Vs Ram Narein
A.I.R. 1956 S.C. 36 : 1955 Cri.L.J. 152

(ii) The jurisdiction in contempt is not to be invoked unless there is real prejudice which can be regarded as a substantial interference with the due course of justice. The court will not exercise its jurisdiction upon a mere question of property.

Rizwan-UL. Hasan Vs State of Uttar Pradesh
A.I.R. 1953 S C. 185 1953 Cri.L.J. 911

(Jurisdiction-contd)

(iii) Company head office at Nagpur-sale at Bombay-accused reaches back to Nagpur, no entry in the company register, no evidence that he had utilized the funds during the period of his stay at Bombay.

The venue of enquiry or trial of a case like the present is primarily to be determined by the averments contained in the complaint or charge-sheet and unless the facts there, are positively disproved; ordinarily the court, where the charge-sheet or complaint is filed, has to proceed with it, except where action has to be taken under section 202 of the Criminal Procedure Code.

State of Madhya Pradesh Vs K P.Ghiara.
A.I R. 1957 S C.196 : 1957 Cri. L J. 322.

(iv) Where it is uncertain that where the offence of embezzlement whether at Bombay or Nagpur, was committed, section 182 of Cr.P.C. is applicable and the courts at both the places have jurisdiction

Note.—Case remanded back for retrial as the trial court at Nagpur wrongly held that court has no jurisdiction.

State of Madhya Pradesh V/S K P Ghiara
A.I.R. 1957 S.C. 196 : 1957 Cri.L.J. 322

(v) The defect of non-compliance in the investigation with sec. 5 (4) of the Prevention of Corruption Act will not take away the jurisidiction of the special Magistrate U/s 7 to try the case.

State of Madhya Pradesh Vs Veereshwar Raq
A.I R. 1957 S.C. 592 : 1957 Cri.L.J. 892

(vi) Judgment of the lower court based on the misconception to the effect of decision of the Supreme Court is a fit case for the exercise of jurisdiction under Article 136 of the Constitution.

The State of Bihar Vs Basawan Singh
A.I.R. 1958 S.C. 500 : 1958 Cri L.J 976

(vii) One Division Bench of High Court has no jurisdiction to sit in judgment of another Division Bench.

Sidheswar Ganguly Vs State of West Bengal
A.I R 1958 S.C 143 · 1958 Cri.L J. 273

(vii) Section 3 (2) of the Contempt Act do not stand in the way of the High Court taking cognizance of the contempt.

State of Madhya Pradesh Vs Pevashankar
A I R. 1959 S C. 102 · 1959 Cri L J. 251

(Jurisdiction-contd)

(ix) Aspersions made by the accused amount to what is called scandalising the court itself. This scandalising manifest in such an attack on the magistrate has tended to create distrust in the popular mind and impair the confindence of the people in the courts. So it is contempt and the High Court can take cognizance.

State of Madhya Pradesh Vs Revashankar
A.I R 1959 S.C. 102 : 1959 Cri.L J. 251

(x) Under Merchandise Marks Act the criminal court has jurisdiction

Dau Dayal Vs State of Uttar Pradesh
A.I.R. 1959 S.C. 433 : 1959 Cri.L.J. 524

(xi) Misrepresentation by accused at Simla and the property delivered at Lahore, accused can be tried for offence of cheating either at Simla or at Lahore Consequently, 'H' being abettor, is to be tried either at Simla or Lahore,

Note :—The case of these accused was allotted to the Special Tribunal at Lahore and would have normally been tried there, but for the partition of India, the trial, under the authority of law, was concluded at Simla. There seems, therefore, to have been no illegality committed in trying the appellant and H together at Simla.

K. Satwant Singh Vs State of Punjab
A.I.R. 1960 S.C. 266 : 1960 Cri.L.J. 410

(xii) The accused for an offence of embezzlement i.e., 409I.P.C. can be tried by the magistrate, and the courts below were wrong in coming to the conclusion that the respondent could not be tried for that offence by Magistrate.

Note—The appeal of the State was allowed and the Magistrate was directed to proceed with the trial of the accused U/s 409 IPC.

State of Punjab Vs Shadi Lal
A.I R. 1960 S.C. 397 : 1960 Cri.L.J. 539

(xii) Special Judge appointed under the prevention of Corruption Act and under criminal Law Amendment Act still he can try an accused for an offence under IPC such as offences U/s 420, 46 7 & 120 B with which the accused under the code of Criminal Procedure Code. has been charged, at the same trial.

The State of Andhra Pradesh Vs Kandimalla Subbash
A.I.R. 1961 S C. 1241

(xiv) The court having jurisdiction to try the offence of conspiracy has also juris diction to tryan offence constituted by the overt acts which are committed in pursuance of the conspiracy beyond its jurisdiction.

L.N. Mukherjee Vs State of Madras
A.I.R. 1961 S.C. 1601 ; 1961 Cri.L J. 736

(*Jurisdiction-contd*)

(xv) The procedure of recording evidence with respect to the offences, which are subject of different session trial alone, is not warranted by the provisions of the Criminal Procedure Code.

Banwari Vs State of Uttar Pradesh
A.I.R 1962 S.C. 1198 : 1962 (2) Cri. L J. 278

(xv) Section 182 does not require that action must always be taken if the person who moves the public servant knows or believes that action would be taken. In making his report to the Tehsildar, therefore, if the appellant believed that some action would be taken (and he had no reason to doubt that it would not), the offence under that section was complete. It was, therefore, incumbent, if the prosecution was to be launched, that the complaint in writing should be made by the Tehsildar as the public servant concerned in this case. On the other hand, complaint by the Tehsildar was not filed at all, but a charge-sheet was put in by the Station House Officer.

This is not a due compliance with the provisions of that section. What the section contemplates is that the complaint must be in writing by the public servant concerned and there is no such compliance in the present case. The cognizance of the case was, therefore, wrongly assumed by the court without the complaint in writing of the public servant namely the Tehsildar in this case. The trial was thus without jurisdiction ab initio and the conviction cannot be maintained.

Daulat Ram Vs State of Punjab
A.I.R. 1962 S.C. 1206 : 1962 (2) Cri. L.J. 286

(xvi) The Delhi court had jurisdiction to try the accused of the offence U/s 409 IPC committed at Bombay as the offence was alleged to have been committed in pursuance of the Criminal Conspiracy with which he and the other co-accused were charged.

R.K. Dalmia Vs The Delhi Administration
A.I.R. 1962 S.C 1821 : 1962 (2) Cri. L.J 805

(xviii) The proceedings under section 488 of Cr. P.C can be taken against the husband or father, as the case may be, in a place where he resides. permanently or temporarily or where he last resided in any District in India or where he happens to be even on the casual visit, at the time the proceedings are initiated

Note :—In this case the husband was residing in Africa and he came to Ludhiana for short time when the petition U/s 488 Cr P C was moved

Smt. Jagir Vs Jaswant Singh and another
AIR 1963 S C 1521 : 1963 (2) Cri. L J. 413

(Jurisdiction-contd)

(xix) A court trying an accused for an offence of conspiracy is competent to try him for all offences committed in pursuance of that conspiracy irrespective of fact that any or all the other offences were not committed within its territorial jurisdiction.

Banwrilal Vs Union of India
A.I.R. 1963 S.C. 1620 : 1963 (2) Cri L.J. 521

(xx) The jurisdiction U/s 20 of Immoral Traffic Act is not conferred on a magistrate as a person designated but is to be exercised by him in his capacity as a magistrate functioning within the limits of his territorial jurisdiction.

The State of Uttar Pradesh Vs Kaushailiya
A.I.R. 1964 S.C. 416 : 1964 (1) Cri. L.J. 304

(xxi) There is no jurisdiction in the Magistrate of first Class to try an offence under sub-section (1) of section 15 of the U.P.Private Forest Act, 1948 The trial by such a Magistrate is void U/s 530 (P) of Criminal Procedure Code.

The State of Uttar Pradesh Vs Sabir Ali
A.I R. 1964 S.C. 1673 : 1964 (2) Cri. L J. 606

(xxii) A Sub-Inspector of Police in the District of Barma, which is mentioned in the schedule, was an officer for the entire area which formed the jurisdiction of the Collector of Land Customs Delhi, including the place where the seizure was made ; was therefore, competent to make the seizure.

Hukma Vs State of Rajasthan
A.I.R. 1965 S.C. 476 : 1965 (1) Cri L J. 369

(xxiii) The magistrate acting under Section 259 of the Cantonment Act of 1924, acts as a person a designata and therefore, his order under that Section is not revisable under Sections 435/439 of the Code of Criminal Procedure. So Sessions Judge and the High Court have no jurisdiction under these provisions to interfere.
(A.I.R 1962 S.C. 574--Relied upon).

Note .—This contention was not allowed to be raised at this stage i.e., before the Supreme Court.

The Cantomment Board Ambala Vs Pyarelal
A.I.R. 1966 S.C 108 : 1966 Cri L.J. 93

(xxiv) When the Magistrate does not frame a charge which is exclusively triable by the court of Session and acquits the accused in the other charges, the Magistrate acted without jurisdiction, he is to charge the accused with that charge and commit the accused to the court of Session.

Note ·—In this case the accused prima facie committed an offence U/s 467 I P.C.

(*Jurisdiction-contd*)

along with offences u/ss 420/468/406 I P.C. but was not charged with that offence u/s 467 I.P.C. The case was remanded to the court of Session, after setting the order of acquittal aside, and the case was committed to the court of Session

Matukdhar Singh Vs Janardaa Prasad
A.I.R. 1966 D.C. 356 : 1966 Cri. L.J. 307

(xxv) No restrictions other than those prescribed undar sub/rule (4) of Rule 30 can be imposed on a detenu. If the appropriate authority seeks to impose on a detenu a restriction not so prescribed, the said authority will be interfering with the personal liberty of the detenu in derogation of the law whereunder he is detained. If that happens, the High Court, in terms of Article 226 of the Constitution, can issue an appropriate writ or direction to the authority concerned to act in accordance with law.

The State of Maharashtra Vs Prabhaker Pandurang Saaygiri
A.I.R. 1966 S.C. 424 : (Pare 5) · 1966 Cri. L.J. 311

Jurisdiction-Discharge

The appellant and others were tried for offences U/s 307/148/149 I.P.C. but the enquiry Magistrate after examining Prosecution witnesses decided U/s 251-A of the Criminal Procedure Code to try the petitioner himself for offences U/ss 326 and 338 I.P.C.

It is manifest that the order of the Magistrate is tentamount to an implied order of discharge for an offence U/s 307 I.P.C. so the Additional Sessions Judge had, therefore, jurisdiction, U/s S.437, Criminal Procedure Code, to set aside the order of the Magistrate and to order that the accused should be committed to trial in the court of Sessions on the major charge under Section 307, Indian Penal Code. There is nothing in the language of S.437, Criminal Procedure Code from which it could be said that the power of the Sessions Court under that Section can be exercised only when the Magistrate made an express order of discharge. The Section 209 (1) Criminal Procedure Code does not contemplate that an express order of discharge should be made in a case where upon the same facts it is possible to say that though no offence exclusively triable by a Court of Sessions is made out, an offence triable by a Magistrate is nevertheless made out and the Magistrate thereafter proceeds with the trial of that offence.

The language used in S 437, Ciminal Procedure Code is wide and there is nothing in that Section from which it could be gathered that the power can be exercised only when the Magistrate has made an express order of discharge.

Ramekbal Liwary Vs Madan Mohan Siwary
A.I.R. 1967 S.C. 1156 (August Part.) . 1967 Cri. L.J. 1076

Jurisprudence

One of the fundamental canons of the British System of Criminal Jurisprudence and the American Jurisprudence has been that the accused should not be compelled to incriminate himself The Indian Legislature was aware of the above fundamental canon of criminal jurisprudence because in various sections of the criminal procedure code it gives effect to it.

Ranchhod Lal Vs State of Madhya Pradesh
A.I.R. 1965 S.C. 1248 · 1965 Cri. L.J. 253

Juristic Person

The State is a Juristic person.

The State of Uttar Pradesh Vs Mohammad Naim
A.I.R. 1964 S.C. 703 : 1964 (I) Cri. L.J. 549

Jury

Intrial in respect of offences, some of which are triab'e with jury and others with assessors Sessions Judge had no jurisdiction to refer the whole case to the High Court U/s 307 Criminal Procedure Code.

Chandi Prasad Singh Vs State of Uttar Pradesh
A.I R. 1956 S.C. 149 : 1956 Cri. L.J. 322

Judge in his charge to the jury indicating opinion in favour of accused but accepting contrary opinion of jury, it would be very desirable view and though not imperative, that he should give his reasons why he changed his accepted verdict of Jury.

Moseb Kaka Chowdhry Vs State of West Bengal
A.I.R. 1956 S.C. 536 : 1956 Cri. L.J. 940

When the evidence of certain witnesses is not given by the prosecution, an adverse inference can be drawn. Judge should direct the jury to take the same If these directions have not been given, this defect was not likely to have caused any serious prejudice

Sardul Singh Vs State of Bombay
A I.R. 1957 S.C. 747 : 1957 Cri. L.J. 1325

In explaining the law of grievous hurt, the judge must tell the jury that grievous hurt was only an aggravated form of hurt and the judge must tell that even if they held that the accused did not cause grievous injury, it would be open to them to hold that the accused caused simple injury

Smt. Nagindra Bala Vs Sunil Chundra Roy
A.I R. 1960 S C. 706 : 1960 Cri L.J. 1020

Jury Trial

Where the judge directed to the jury that even though a person may not be present when the offence is actually committed and even if he remains behind the screen he can be convicted U/s 34 I.P.C. provided the common intention is proved, it amounted to misdirectian and there was a miscarriage of justice.

A.I.R. 1955 S.C. 287 : 1955 Cai. L J 857

Juror not acquainted with English.

Held :—The effect of the incompetence of a juror is to deny to the accused an essential part of the protection accorded to him by law and that the result of the trial in the present case was a clear miscarriage of justice.

Note :—Conviction and sentence, were set-aside.

Kapil Deo Shukla Vs State of Uttar Pradesh
A.I.R. 1958 S C 121 : 1958 Cri. L.J. 262

Jury Verdict

Under Section 307 of Cr.P.C. even if the Judge disagrees with the verdict of the jury he must normally give effect to that verdict unless he is prepared to hold the further and clear opinion "that no reasonable body of men could have given the verdict which the jury did."

Santa Singh Vs State of Punjab
A I.R. 1956 S.C 536 1956 Cri. L.J. 940

Justice

(i) Justice must not only be done but must also appear to be done.

Manak Lal Advocate Vs Dr. Prem Chand
A.I.R. 1957 S C. 425

(ii) The tribunals should follow law of natural justice and the law of natural justice requires that a party should have opportunity of adducing all relevant evidence on which he relies. Evidence should be taken in the presence of the parties and opportunity to cross examination be given

If these rules are satisfied, the enquiry is not open to attack on the ground that the procedure laid down in the Evidence Act for taking evidence has not strictly been followed

Note No violation of the principles of natural justice was found.

Union of India Vs T.R Varma
A.I R. 1957 S.C 882

(iii) When the calm detached atmosphere of a fair and impartial judicial trial

would be wanting, the case should be transferred, as even if justice were done it would not be "seen to be done"

Note ·—In this case complaint U/s 500 was against christians by non-christian. Judged was alleged to have biased opinion. Because of communal feelings the case was transferred.

G.X. Francis Vs Banke Bihari Singh
A.I.R. 1958 S.C. 309 : 1958 Cri. L.J 569

(iv) It cannot be said to be in the interest of justice that after a decision has been given against the complainant upon the full consideration of his case, he or any other person should be given another opportunity to have his complaint enquired into. A fresh complaint can be entertained where there is manifest error, manifest miscarriage of justice in the previous order or when fresh evidence is forthcoming.

Note :—Fresh Complaint was not considered with the object of furthering the interest of justice.

Pramatha Nath Talukdar Vs Saroj Ranjan Sarkar
A.I R. 1962 S.C. 876

Justification

If the act complained of is wholly justified by law, it would not amount to an offence at all in view of the provisions of section 79 of the Penal Code.

Police officers while investigating a case are not authorised to beat or unlawfully confine the accused.

Note .—In this case appellant Police officers gave beating and kept the accused in the wrongful confinement. Sentence of appellant Police officer was restored

The State of Andhra Pradesh Vs N. Venugopal
A.I.R. 1964 S C. 33 . 1964 (1) Cri. L J. 16

"K"

Kidnapping

See :—Lawful guardianship

Knowledge

(i) The fatal injury was inflicted by the accused on the head of the deceased by one lathi blow in the manner the prosecution alleges it could as well be that the act by which death was caused was not done with the intention of causing such bodily injury as was likely to cause death. The act appears to have been done with the knowledge that it was likely to cause death, but without any intention to cause death or to cause such bodily injury as was likely to cause death within the meaning of Part II of Section 304 of the Penal Code.

Note:—Conviction u/s 302 of Penal Code was set aside but was convicted u/s 304 part II and was sentenced For seven years.

Chamru Budhwa Vs State of Madhay Pradesh
A.I.R. 1954 S.C. 652 : 1954 Cri. L J. 1676

(ii) From the bare fact that the accused was residing in the complainant's village. his knowledge that the ornaments were stolen property cannot be legitimately be concluded.

Note :—Appeal was accepted.

Trimbak Vs State of Madhya Pradesh
A.I.R. 1954 S C. 39 : 1954 CriL.J. 335

(iii) Thirteen days after the murder accused knew that the deceased had been murdered. He also knew the place of occurrance and where the body and certain articles belonging to the deceased were hidden. There was ill will between them and he (accused) had opportunity to murder

Held that the mere knowledge thirteen days later coupled with a motive which three other shared and a lie about the deceased's movements, are not enough to warrant a conclusion of murder by the accused.

Machander Vs State af Hyderabad
A.I.R. 1955 S.C 792 : 1955 Cri, L J. 1644

(vi) Discovery of incriminating articles recovered at the instance of the accused

(*Knowledge-contd*)

is inadmissible in evidence if the police already knew where they were hidden.

Note :—The appeal was accepted and the conviction was set-aside.

Aher Raja Khima Vs State of Saurashtra
A.I.R. 1956 S.C. 217 · 1956 Cri. L.J. 426

(v) The court must attribute to the intoxicated man the same knowledge as if he was quite sober but so far as intent or intention is concerned the court must gather it from the attending general circumstances of the case paying due regard to the degree of intoxication.

The appellant asked the deceased a young boy of 15 or 16 to step aside a little so that he may occupy a convenient seat. Boy did not move. The appellant whipped out a pistol and shot the boy in the abdomen.
The appellant was excessively drunk at that time.

Held —The evidence show that after the incident the appellant requested the witnesses to forgive The appellant also attempted to runaway All these facts show that there was not incapacity to understands, in the accused and had the knowledge of his act.

Note ·—Appeal was dismissed

Basdev Vs State of Pesu
A.I.R. 1956 S.C. 488

(vi) Any person who carries a fire arm at that hour of night and used it and then continues a fight, after an excited crowd had assembled. The killing is a likely consequence of such an assault. So the requisite knowledge of death could be imputed to all others who joined them (S & g) in beating all those who came to the help of P.

Note —Stand Gattacked on the persons of another caste with gun and sword. All those who came to their help were held to be equally guilty. In a case of unlawful assembly or riot courts are concerned with common object.

Sukha Vs State of Rajasthan
A.I.R. 1956 S C. 513 : 1956 Cri.L.J. 923

(vii) Chand Singh held the deceased by the head and the appellant inflicted as many as 18 injuries on the arms and legs of the deceased with a gandasa. It is significant that out of all the injuries which were thus inflicted none was inflicted on a vital part of the body. The fact that no injury was inflicted on any vital part of the body of the deceased goes to show in the circumstances of this case that the intention of the appellant was not to kill the deceased outright. He inflicted the injuries not with the intention of murdering the

(*Knowledge-contd*)

deceased, but causing such bodily injuries as, he must have known, would likely to cause death.

Note :—The sentence was altered from 302 IPC to S. 304 (1) IPC. and sentence of death was altered to one of transportation.

Rapur Singh Vs State of Pepsu
A.I.R. 1956 S C. 654 : 1956 Cri. L.J. 1265

Knowledge

(viii) The appellant was the General Manager of the Company which was owning a large number of motor buses and trucks plying between the important towns. The appellant as the General menager is alleged to have signed certain papers for procuring Petrol-coupons for buses and trucks plying on the road, knowing the same representation to be false.

Held :—It is the duty of the prosecution to prove affirmatively that the accused knew that the representation made are false and in the absence of circumstances from which it can be gathered that any such knowledge can be imputed to the accused, it is a case in which the benefit of reasonable doubt should be given to the accused. If the Court is not satisfied that the appellant affixed his signature, knowing or having reason to believe that the statements contained in Exs. 15 and 16 are false, then he has not committed an offence under S. 420, Penal Code.

Sudhdeo Tha Utpal Vs State of Bihar
A.I.R. 1957 S.C. 466 : 1957 Cri. L.J. 583

(xi) Whatever relevant to the case is in the knowledge of the accused he must prove in his defence.

Krishan Kumar Vs Union of India
A.I R. 1959 S.C. 1390 : 1959 Cri. L J 1508

(x) The fact that the appellant were in the house and **could have possibly known of the** removal of the dead bodies, if that was a fact, would not by itself establish that the appellant assisted in the removal of the bodies. Therefore, no offence U/s 201 of I.P.C. is established against the appellant.

Raghav Prapanna Vs State of Uttar Pradesh
A.I.R. 1963 S.C. 74 1963 (1) Cri. L J. 70

Knowledge—Common intention

(xi) A person does not do an act except with intention ; and the common intention which is requisite for the of S. 34 IPC is the common intention of perpetrating a p... previous concert which is insisted upon is the meeting of the ...ng the achievement of a criminal act. Where a large number ...ck an individual. ch...

(Knowledge common intention-contd)

him throw him on the ground and beat him till he dies. Even if the offence does not come to the grade of murder, and is only culpable homicide not amounting to murder, there is no doubt that the offence is shared by all of them and S 34 then makes the responsibility several if there was a knowledge possessed by each of them that death was likely to be caused as a result of that beating.

Note ;—The conviction of the appellant was held to be proper and the appeal was dismissed.

Abrahim Sheikh Vs State of West Bengal
A.I.R. 1964 S.C 1263 . 1964 (2) Cri. L.J. 350

(xii) In prosecution under section 292 IPC the prosecution need not prove that the person who sells or keeps for sale any obscene object knows that it is obscene, before he can be adjudged guilty.

Ranjit D. udeshi Vs State of Maparashtra
A.I R. 1965 S.C. 881 1965 (2) Cri. LJ. 8

(xiii) Ignorance of knowledge of Notification is not a valid defence. Publication in Gazette of India is effective to give notice of it to all persons concerned

State of Mahrashtra Vs Mayer Hans George
A I.R. 1965 S.C. 722 1965 (1) C i. L.J. 641

Knowledge and belief

The fact that the affidavit filed by the appellant was affirmed as being true to the best of knowledge and belief did not affect the question of guilt in as much as even a false statement as to belief would fall under explanation 2 to section 191.

Note —Conviction U/s 193 I P C. for filing false affidavit in the court was upheld.

Ranjit Singh Vs The State of Pepsu
A.I.R. 1959 S.C. 843 : 1959 Cri L.J. 1124

Knowledge and intent

The demarcating line between knowledge and intention is no doubt thin but it is not difficult to perceive that they connote different things.

Basdev Vs State of Pepsu
A I R 1956 S.C. 488

Knowledge

There is no burden on the prosecution to establish that the appellant had personal knowledge of the bogus nature of the claim. Knowledge involves the State of mind of the appellant accused and no direct evidence of that knowledge could possibly be given by the prosecution. The very fact that

the claims were bogus and did not accord with the true facts, lead to the inference that the appellant knew that the representation which he was making was false.

Bakhshish Singh Versus State of Punjab
A.I.R 1967 S C. 752 (May Part) : 1967 Cri. L.J. 656

Known

The expression 'Known Source of income' must have refrence to sources known to the prosecution on a thorough investigation of the case.

Sajjan Singh Vs State of Punjab
A I.R. 1964 S.C. 464 : 1964 (1) Cri. L.J. 310

Knowing

The expression "knowing or have reasons to believe" in para 1 of Section 201 of I.P.C. and 'believes' in para 2 mean the same thing. It is difficult to impute such an intention to the legislature. And to hold that the minor offence of screening an offender under S. 201 is punishable more severely than the main offence committed by the main offender.

Note :—The appellants were charged for the offence U/s 330 and 348 but were convicted only U/s 201 IPC. The sentence of the main offence U/s 330 is only 7 years. Sentence U/s 201 cannot be awarded more than the 1/4th of the main offence. Sentence to one year and nine months was reduced.

A.I.R. 1965 S.C. 1413

"L"

Language

Jurror not acquainted wiqh English. The trial is vitiated. No question oɟ prejudice of the accused.

Kapil Deo Shukla Vs State of Uttar Pradesh
1958 S.C. 121 : 1958 Cri. L.J. 262

Last Resided

The proceedings under section 488 of Cr. P. C. can be taken against the husband or father, as the case may be, in a place where he resides, permanently of temporarily or where he last resided in any District in India or where he happens to be even on the casual visit, at the time proceedings are initiated.

Note :—In this case the husband was residing in Africa but he came to Ludhiana for short time when the petition U/s 488 Cr. P. C. was moved.

Mst. Jagir Kaur Vs Jaswant Singh
1963 S. C. 1521 : 1963 Cri. L J 413

Last Seen

See :—*Circumstantial Evidence— at Serial No. II (Page 66), No. V (Page 66), No 18 (70). 19 (70)*

Lathi Blow

Accused inflicted six blows of the Lathi on the person of the deceased and the injury No. 1 proved fatal. The Lathi not being iron shod and the deceased being a youngman and strongly built the accused could not under the circumstances be held to have been actuated with the intention of causing the death of the deceased, nor despite the medical evidence, the injury was sufficient in the ordinary course of Nature to cause his death, seeing that he (deceased) survived for three weeks and the injury was curable. But the accused knew that he would be causing such bodily injury as was likely to cause death so the offence would fall U/S 304 Part I and not U/S 302 IPC.

Note :—Lifie sentence was converted into ten years R.1.

Inder Singh Vs State of Pepsu
A 55 S.C. 439 : 1955 Cri.L. J. 1014

Law

(i) Law in India about the committal proceedings is the same as that in England.

Ramgopal Vs State of Bombay
A.I.R. 1958 S.C. 97 : 1958 Cri L. J. 244

(ii) The word Law in Art. 21 of the Constitution refers to law made by the State and not to positive law or law in the abstract sense embodying the principles of natural justice, and procedure established by law means procedure established by law made by the State, that is to say, by the Union Parliament or the 'Legislatures of the States.

Ram Chandra Prasad Vs State of Bihar
1961 S C. 1629 · 1961 (2) Cri-L-J. 811

Law Commissioners

Though a passage from the report of India Law commissioner may be valuable as a matter of history, it cannot be legitimate guide for the construction of the section of the Penal Code.

Mobarik Ali Ahmed Vs The State of Bombay
A.I R. 1957 S.C. 857 : 1957 Cri. L.J. 1346

Lawful Guardianship

(i) If the girl is kept by her father at the house of his relatives, she still continues to be in the lawful guardianship of the father.

S. Varadarajan Vs State of Madras
A.I.R. 1965 S.C. 942 : 1965(2) Cri. L.J. 33

(ii) Where the minor leaves her father's protection knowing and having the capacity to know the full import of what she is doing, voluntarily joins the accused person, the accused cannot be said to have taken her away from the keeping of her lawful guardian.

Note :—The appeal was allowed Conviction was set-aside. The girl was college student and was rather compelling the accused to marry her.

S. Varadarajan Vs State of Bombay
A.I R. 1965 S C. 942 : 1965(2) Cri. L.J. 33

(iii) Mst. Sukhwara a girl of below the age of 15, was a healthy, over built girl and stronger than the appellant was also dissatisfied with her marriage, met appellant at the house of Mst Rambai and he held out blandiahentms to her that he would make her his wife.

Held :—She left the gaurdianship of her grandfather under this inducement of the appellant. This is not a case where the minor breaks out of gaurdian ship without any inducement and is then accosted by a Person who instead of returning the minor to the gaurdian, takes the minor away with him. Here

(Lawful Guardianship-contd)

she left gaurdianship of her grandfather on a direct inducement from appellant that he would make her his wife So the offence is proved.

It is no excuse to say that the accused believed the girl to be over the age as a person who deals with a minor act at his own peril.

That the developed body, willingness and her already tiredness from her husband are the mitigating circumstance which can help the accused in the matter of sentence

Note.—Sentence from one year R.I (although lenient in ordinary circumstance) was held to be too severe. It was reduced to three months R I.

D.L.J. 1968 S C N. 15 at Page 25
Criminal appeal No. 264 of 1964 decided
On 15-11 1967

Leave

High Court has power to dismiss appeal summarily. Leave to appeal should not be granted on ground that the appeal should not have been dismissed summarily.

Chittaranjan Das Vs State of West Bengal
A.I.R. 1963 S.C. 1696 : 1963 Cri. L. J. 534

Leave to appeal

(i) Where the High Court has merely said "leave to appeal to the Supreme Court is granted". It is impossible for the Supreme Court to gather what induced the High Court to grant this leave or what points of outstanding importance that require to be settled are. The learned judges of the High Court have not even certified that this is a fit case for appeal.

Held ;—It is not a curable irregularity High Court should have applied his mind to the facts and law of the case. High Court also did not realise the responsibility that is cast upon it by Art. 134 (1) (c) of the Constitution and that its discretion has to be "judicially" and not mechanically exercised

Note :—Supreme Court declined to accept this appeal as an appeal under Sub. art c of Art. 134.

Baladin Vs State of Uttar Pradesh
A.I R. 1956 S.C. 181 : 1956 Cri. L.J. 345

(ii) It is clear that a certificate cannot be granted under sub-article (c) if the High Court is in doubt about the facts If there is doubt in the minds of the learned Judges about the facts, their duty is to acquit. They cannot convict and then issue a certificate because they cannot make up their minds about the facts.

Baladin Vs State of Utter Pradesh
A.I.R. 1956 S.C. 181 : 1956 Cri. L J. 345

(Leave to appeal-contd)

The High Court has no jurisdiction to grant a certificate under Article 134(1) C of the Constitution in a case where question of fact is involved but the Supreme Court under Article 136 of the Constitution possess the power to interfere in a case involving a question of fact.

1956 S.C. 757

Prosecution and accused are to prove their respective allegations. Failure of the accused to lead evidence cannot be a good ground for granting leave to appeal as the evidence if forth coming, (it cannot be urged,) would have demolished the case of the prosecution

1956 S.C. 757

Legally Bound.

Whenever a man makes a statement in court on oath he is bound to state the truth; it is no defence that he was not bound to enter the witness box.

Ranjit Singh Vs The State of Pepsu
A.I R. 1959 S. C.843 : 1959 Cri L.J. 1124

Legal Practitioner

A member of the bar is an officer of the Court and owes the duty to the court in which he is appearing. He must up-hold the dignity and decorum of the court and must not do anything to bring the court itself into disrepute

A legal practitioner imputed partiality and unfairness against the Munsif in the open court. He suggested that the Munsif followed no principle in his orders ;

Held —That the legal practitioner was guilty of grave professional mis-conduct.

Lalit Mohan Dass Vs The Advocate General Orissa
A.I R. 1957 S C. 250

Legal Right

By the expression colour of a legal right is meant not a false pretence but a fair pretence, not a complete absence of claim but a bonafide claim, however. weak. "If there be in the prisoner any fair pretence of property or right, or if it be brought into doubt at all, the court will direct an acquittal ".

"It is not theft if a person, acting under a mistaken notion of law and believ-ing that certain property is his and that he has the right to take the same ....removes such property from the possession of another." There was absence of the animus furandi and the circumstances bring this case within the rule that where the taking of moveable property is in the assertion of a bonafide claim of right, the act, though it may amount to a civil injury, does not fall within the offence of theft.

Chandi Kumar Dass Vs Abanidhar Roy
A.I R 1965 S.C. 585 : 1965 :1965 (1) Cri. L. J. 496

Legisla tive power

If the legislature thought that having regard to the grave threat to the security of India posed by the Chinese Aggression, it was necessary to pass the Defence of India Act notwithstanding the fact that another Act(4 of 1950) had already been passed, in that behalf, it would be difficult to hold that legislature had acted malafide and the act must be struck down as colourable exercise of legislative power. It is hardly necessary to emphasise that a plea that an act passed by a legislature competent to pass it is a colourable piece of legislation, cannot succeed on such flimsy grounds. Whether or not it was wise that this part of the Act should have been passed, is a matter which is wholly irrelevant in dealing with plea that the Act is colourable piece of legislation.

Makhan Singh Vs The State of Punjab
A.I.R. 1964 S. C 381 : 1964 Cri L J. 269

It is the duty of the court to try to get at the real intention of the legislature by carefully attending to the whole scope of the statute. When the Legislature has enacted in emphatic terms a provision it is clear that it had a definite policy behind it. To appreciate that policy it is relevant to observe that under the Code of Criminal Procedure most of the offences relating to public servants as such, are non-cognizable.

M N. Rishbud Vs State of Delhi
A.I.R. 1955 S.C. 196 : 1955 Cri L. J. 526

The court while interpreting the law must consider the antecedent history of the Legislation, its purpose and the mischief it seeks to supress.

Kedar Nath Singh Vs. State of Bihar
A.I.R. 1962 S.C. 955 : 1962 Criminal L.J. 103

Leniency

Merely because leniency had been shown to the other appellants in the matter of sentence is no ground for reducing sentence passed on this appellants. The prosecution evidence proves that the assault was a brutal and a premeditated one arising out of deep rooted enmity which appellants had towards Ram Prasad and his family. So in such circumstances leniency can't be shown.

Jardine Henderson Ltd. Vs. The Workmen
1963 S.C. 474

Lethal Weapon

Where death is due to injuries or wounds caused by a lethal weapon, it is always the duty of the prosecution to prove by expert evidence that it was likely or at least possible for the injuries to have been caused with the weapon with which and in the manner in which they are alleged to have been caused.

It is only by the evidence of a duly qualified expert that it could have been ascertained whether the injuries attributed to the appellant were caused by a gun or by a rifle and such evidence alone could settle the controversy as to whether they could possibly have been caused by a fire-arm being used at such a close range as it suggested in the evidence.

Note :—There has been no fair trial and the appeal was accepted. Conviction was set-aside.

Mohinder Singh Vs. The State
A.I.R. 1953 S.C. 415 : 1953 Cri. L. J. 1761

Letter

The appellant hired a Westinghouse, D. C. motor from the Modern Electrical Works (hereinafter referred to as the Works) on April 4, 1958 on a rent of Rs 40 per month, The hiring period was to last for at least three months and it was agreed that if the motor or parts thereof were lost or damaged by the appellant, he would be bound to pay the whole cost of the motor and the parts.

On june 8, 1959, the appellant wrote a letter to the Works in which he said that he had purchased the motor in question for Rs. 600/- on condition that the same would be tried for three months, and if it was found satisfactory the money would be paid and the purchase completed. The appellant said in the letter that the Works had been paid Rs. 620/- in all and thus the purchase had been completed. **Held** it cannot be said that by merely writing letter appellant dealt with the property in such a manner as would amount to its misappropriation or conversion to his own use. Letter merely raised a dispute of civil nature between the parties. There was no offence with respect to criminal breach of trust

Mohammad Sulaiman Vs. Md Ayub
A.I.R. 1965 S.C. 1319 : 1965 Cri. L. J. 421

Liability of Surety

B. Surety submitted bond for the appearance of the accused on 9th July, 1958 which was sent to Tehsildar for verification and was formally accepted by the magistrate on August, 20, 1958.

Held —A formal acceptance of a surety bond on a future date does not in any way effect the surties liability on the bond from the earlier date on which it was not accepted. So surety is liable and the bond can be forfeited.

Bekaru Singh Vs. State of Uttar Pradesh
A.I R. 1963 S.C. 430 : 1963 (1) Cri. L J. 335

Liberty

No member of the Executive can interfere with the liberty of a subject except on condition that he can support the legality of his action before a court of justice and it is the tradition of British justice that pledges should not shrink from deciding such issues in the face of the executive." It is the same jurisprudence which has been adopted in this country on the basis of which the courts of this country exercise jurisdiction.

State of Bihar Vs Kameshwar Prased
A I.R. 1965 S C. 575 : 1965 (1) Cri. L J. 494

License

Use of Radio set without a licence is an offence U/s 20 of the Telegraph Act.

State of Bihar Vs Mangal Sao
A I.R. 1963 S.C. 445 : 1963 (1) Cri L.J. 338

Life Imprisonment

The duration of imprisonment for life is not definitly fixed. Section 57 of the Penal Code does not say that the transportation for life shall be deemed to be for twenty years. Unless the said sentence is commuted or remitted by appropriate authority under the relevant provisions of the Indian Penal Code or the Code of Criminal Procedure, a prisoner sentenced to life imprisonment is bound in law to serve the life term in prison. The Constitution as well as the Code of Criminal Procedure confer the power to remit a sentence on the Executive Government and it is in its exclusive province. Supreme Court cannot assume that the appropriate Government will not exercise its jurisdiction in a reasonable manner.

Gopal Vinayak Godse Vs The State of Maharashtra
A.I.R. 1961 S C. 600 : 1961 (1) Cri. L.J. 736

Limitation

All that S. 15 of the Merchandise Marks Act (1889) requires is that a private prosecutor should prefer his complaint within one year of the discovery of the offence, and if that is done, the bar under that section cannot apply.

Dau Dayal Vs State of Uttar Pradesh
A.I.R. 1959 S.C. 433 : 1959 Cri. L J. 524

Liquor

Except for a general statement contained in the evidence of the witnesses, particularly P-Ws. 1 and 4, that there was a strong smell of alcohol, emanating from the tins, which were pierced open, there is no other satisfactory evidence to establish that the article is one coming within the definition of the expression 'liquor'. Merely trusting to the smelling sense of the Prohibi-

tion Officers, and basing a conviction, on an opinion expressed by these officers under the circumstances. Better proof, by a technical person, who has considered the matter from a scientific point of view, is not only desirable, but even necessary to establish that the article seized is one coming within the definition of 'liquor'.

Note :—Appeal of the state was dismissed.

State of Andhra Pradesh Vs Madiga Boosenna
A.I R. 1967 S.C. 1550 :1967 Cri L.J 1398

"M"

Machine.

When the statute says that it will be duty of the occupier or the manager to keep the guard in position when the machine is working and when it appears that he has not done so, it will be for him to establish that notwithstanding this he was not liable.

Note:—In this case the respondent is the Manager of an oil mill. The mill had a spur gear wheel A workman of the mill while greasing the spur gear wheel which was then in motion had one of his hands caught in it. Eventually that hand had to be amputated The respondent was prosecuted under S. 92 of the Act for having failed to comply with S. 21(1)(iv)(c) in it

Note.—Judgements of acquittal of the courts below were set-aside and the respondent was convicted.

The state of Gujarat Vs. Jethalal Ghelabhi Patel
A.I R. 1964 S.C. 779. : 1964 (1 Cri. L J.558

Magistrate

(i) The magistrate should not be asked by the police to be the member of Police raiding party. It would be particularly unfortunate if Magistrates were asked at all generally to act rather as police officers under section 162 of the Code and to be at the same time freed, notwithstanding their position as Magistrates from any obligation to make records. To make the Magistrate a party or a limb of the police during the police investigation seriously undermines the independence of the Magistrate and perverts their judicial outlook. The Magistrates are the normal custodians of the general adminstration of criminal justice and it is they who normally decide and pass judgments on the acts and conduct of the police. The independence of the judiciary is a priceless treasure to be cherished and safeguarded at all costs against predatory activities of this character and it is of the essence that public confidence in the independence of the judiciary should not be undermined by any such tactics adopted by the executive authorities.

Note —The evidence of the Magistrate was eliminated.

Rao Shri Bahadur Singh Vs State of Vindh Pradesh
1954 S. C 322 : 1954 Cri. L.J. 910

(*Magistrate-contd*)

(ii) Magistrate is a functioning judicial matter so he should not be relegated to the position of partisan witnesses. But if a Magistrate puts himself in the position of a partisan or interested witness, he cannot claim any higher status and must be treated as any other interested witness.

Note;—Magistrate was the member of raiding party, and was considered as an interested witnesses but the corroboration was found from two search witnesses. Acquittal was set-aside.

The State of Bihar Vs Basawan Singh
A.I.R. 1958 S. C. 500 : 1958 Cri. L J. 976

(iii) The memorandum prepared by the magistrate describing the present condition of house where the victim of abduction was confined and the evidence given on the basis of that memorandum would be relevant u/s 9 of the Evidence Act but the statement of the victim not recorded according to section 164 Cr. P. C. would be inadmissible.

Deep Chand Vs State of Rajasthan
A.I.R. 1961 S. C. 1527 : 1961 (2) Cri. L. J. 705

(iv) The Magistrate acting under Section 259 of the Cantonment Act of 1924, acts as a persona designata and the proceedings are not under the Cr. P. C. therefore, his order under that Section is not revisable under Sections 435/439 of the Code. hough the High Court may not have jurisdiction to interfere under Section 435/439 of the Code of criminal procedure it can certainly interfere with the order of Magistrate under Art 227 of the Constitution More-over the magistrates have the power u/s 259 of the act to recover the rent on land or building under the management of the cantonment Board.
A.I.R. 1962 S. C. 574 relied upon,

The Cantonment Board Ambala Vs Pyare Lal
A.I.R. 1966 S.C. 108 : 1966 Cri. L. J. 93

Malafide

(i) Where the grounds on which a detention order is based are also the subject matter of a criminal prosecutions the order of detention may amount to abuse of the statutory powers. But the proceedings conducted on the same grounds U/S 107 Cr. P. C. (Security proceedings) do not interfere with the normal course of justice and is not ipso facto mala fide.

This circumstance calls for scrutiny as to bonafides of the detention order but question of malafides has got to be decided as one of fact with references to all the circumstances of an individual case.

Thakur Prasad Bania Vs The State of Bihar
1955 S.C. 631 : 1955 Cri. L. J. 1408

(*Malafide-contd*)

(ii) Where an order of detention is challengd on the ground of malafides, what has got to be made out is not the want of bonafides on the part of the police but want of bonafides, as well as the non-application of mind, on the part of the detaining authority, *viz*, the Government, which for this purpose must be taken to be different from the police.

Lawrence Joachim Joseph D' Souza Vs The State of Bombay
1956 S.C. 531 : 1956 Cri. L J. 935

(iii) A plea of mala fide must always be made by proper pleadings at the trial stage, so that the respondent should have an opportunity to meet the said pleadings It cannot be made for the first time in the averment of the application for special leave to appeal in the Supreme Court.

Makhan Singh Vs The State of Panjab
A.I.R 1964 S.C. 1120 : 1964 (2) Cri. L. J. 217

(iv) The satisfaction of the authority which justified the use of the power under Rule 30, and confirmation of the order of detention are not subject to judical review, for the order of detention without trial is pre-eminently an executive act. The subjective detention of the detaining authority is a condition of the making of the order, and if that condition is shown to exist, the Courts have no power to enquire into the sufficiency of material on which the order is made or the propriety or expediency of making the order. It is the satisfaction of the prescribed authority which is determinative of the validity. That, however, does not exclude the Courts power to investigate into the compliance with the procedural safeguards imposed by the statute, or into the existence of prescribed conditions precedent to the exercise of power, or into a plea that the order was made mala-fide or for a collateral purpose. That however, is not judicial review of the order.

Sadhu Singh Vs Delhi Admn.
A.I R. 1966 S. C. 91 (Page 94)

(v) The appellant was at the relevant time the State Secretary of the Punjab Praja Socialist Party. He is a public worker and belongs to an active political party, He has stated that there was no animus in his mind against the complainant and his father, and that is not seriously disputed. Malice in that sense must, therefore, be eliminated in dealing with the appellant's plea. It is quite true that even if the appellant was not actuated by malice, it would not be possible to sustain his plea of good faith merely because he made the impugned statement as a public worker and he can claim that he was not actuated by personal malice against the complainant. Absence of personal malice may be relevant fact in dealing with the appellant's plea of good faith, but its significance or importance cannot be exaggerated. Even in the absence

(*Malafide contd*)

of personal malice, the appellant will have to show that he acted with due care and attention.

Harbhajan Singh Vs The State of Panjab
A.I R. 1966 S. C. 97 (Para 25) : 1966 Cri. L. J. 82

(vi) The mere fact that the detention order is passed during the pendency of habeas corpus proceedings cannot by itself lead to the conclusion that the order is vitiated by malice in law. It depends on the circumstancecs of the case. The detenu would have to prove not only that the detention order has been passed during the pendeccy of habeas corpus proceedings but also that there are other facts showing malice.

If the Government considers an order of detention, which is the subject-matter of challenge, to be invalid, there is no reason why it should not pass a valid order.

Note.—In this case three successive orders of release and then detention were passed before the order of release were actually carried but those were held legal.

A I.R. 1964 S. C. 1128 was declared no authority for the absolute proposition of law.

Godavari S. Parulekar Vs The State of Maharashta
A.I.R. 1966 S. C. 1404 (Page 1407) : 1966 Cri. L. J. 1067

(vii) Since no allegation of malice or dishonesty have been made in the petition personally against the Minister it is not possible to say that his omission to file an affidavit in reply by itself would be any ground to sustain the allegation of mala fides or non-application of mind.

P. L. Lakhaanpal Vs Union of India
A I.R. 1967 S. C. 908

Manager

(i) The occupier and manager are exempted from liabilities in certain cases mentioned in section 101 of Factories Act. Where an occupier or a manager is charged with an offence he is entitled to make a complaint in his own turn against any person who was the actual offender and on proof of the commission of the offence by such person the occupier or the manager is absolved from liability.

State of Gujarat Vs Kanjara Manilal Bhikshulal
1964 S. C. 1893

(ii) By breach of section 52, 92 of [Factories Act manager as well as an occupier will be liable to penalties.

John Douglas Keith Brown Vs The State of West Bengal
1965 S. C. 1341 · 1965 (2) Cri L. J. 423

Mandatory

(i) U. P. Police Regulations Para 486 Rule I is mandatory.

State of Uttar Pradesh Vs Babu Ram Upadhaa
A.I R. S C. 75 : 1961 (1) Cri. L.J. 773

(ii) See challan (iii) at page 53 and copies at 118 (vi)

Map

(i) Evidence of the drafts man who prepared the map of the place of occurrence and after ascertaining from the witnesses where exactly the assailants and the victim stood at the time of the commission of the offence. The drafts man measure the distances and puts down on the plan, his evidance is legal and admissible. But when the witnesses told the Head constable and Inspector the place of occurrence, 'the map so prepared by them is not admissible under section 162 Cr.P.C. while there is no bar to the evidence given by the draftsman.

Saanta Singh vs State of Punjab.
A. I. R 1956 S C. 526 : 1956 Cri. L J. 930

(ii) The sketch-map in the present case has been prepared by the sub-Inspector and the place where the deceased was hit and also the places where the witnessess were at the time of the incident, were obviously marked by him on the map on the basis of the statements made to him by the witnesses. In the circumstances these marks on the map based on the statements made to to the sub-inspector are inadmissiable under S. 162 of the Code of Criminal Procedure.

Tori Singh Vs State of Uttar Pradesh
A.I.R. 1962 S. C. 399

Marriage

(i) If the marriage is not a valid marriage, it is no marriage in the eye of law The bare fact of a man and woman living as husband and wife does not, at any rate, normally give them the status of husband and wife even though they may hold themselves out before society as husband and wife and the society treats them as husband and wife. So consequently, does not come within the mischief of S. 494 IPC even though the first wife of the appellant (Husband) was living when he married K, the second wife (by unsolemnized marriage)

Note.—The appellant No. 1 (husband) U/s 494 IPC and appellant No. 2 (second wife) U/s 494/114 IPC were acquitted.

Bhaurao Shankar Lokhande Vs State of Maharashtra
A I R. 1965 S C. 1564

(ii) A marriage is not proved unless the essential ceremonies required for its solemnization are proved to have been performed. The oral evidence cannot justify the conviction.

Kanwal Ram Vs The Himachal Pradesh Administration
A.I.R. 1966 S C. 614 : 1966 Cri. L.J. 462

(*Marriage contd*)

(iii) The Sexual relationship with a lady will not prove the marriage.

Kanwal Ram Vs Himanchal Pradesh Administration
A I.R. 1966 S C 614 : 1966 Cri. L.J. 462

(iv) Statement admitting the second marriage by the appellant is certainly not evidence of the marriage.

Kanwal Ram Vs The Himanchal Pradesh Administration
A.I R. 1966 S.C. 614 : 1966 Cri. L J. 462

Master and Servant

Merely an employee in the premises cannot be said to be in the physical possession of things belonging to his master unless they were left in his custody. It would be reasonable to suppose that when he was using the pump he was doing so on the orders of his master and he may not have been aware of what was being manufactured. It cannot also be said that he was in possession of the still. In the circumstances, no presumption could arise under S. 103 against him that he was in possession of the still for which he could not account satisfactorily.

Note :—Appeal of the appellant No. 2 (employee) was accepted and his conviction and sentence were set-aside.

Keki Bejonji Vs State of Bombay
A.I.R. 1961 S.C. 967

Material

(i) The magistrate acting U/s 203 Cr. P C. has to satisfy himself on the statements before him and not besides that, where the magistrate has considered the investigation of police and the evidence adduced before him during the enquiry arising out of another complaint and has based his judgment in dismissing the complaint on such extraneous matter, the proceedings would be vitiated.

Chandra Deo Singh Vs Prakash chandra Bose alias Chabi Bose and another
A I.R. 1963 S C. 1430 : 1963 (2) Cri. L J. 397

(ii) It is for the detaining authority to be satisfied whether on the material berore it, it is necessary to detain a person under rule 30 and this question was held to be not justiciable.

Godavari S. Parullkar Vs The state of Maharashtra
A.I.R. 1966 S C 1404: 1966 Cri. L.J. 1067

(iii) Where the whole version of a witness as to the nature and character of the act of the accused had been completely changed and an act which on the facts stated in the first information report and on the statements made to the

(*Material-contd*)

police may well be regarded either accidental or rash and negligent, has been deliberatery made to look like an act of deliberate murder. Such a difference goes to the root of the case. So the High Court was clearly in error in holding that the accused was guilty of murder.

Held:—The appellant committed offence U/s 304A I.P.C. and not U/s 302 IPC. So the punishment already under gone was taken as sufficient to meet the ends of justice.

Sadhu Singh-Harnam Singh Vs State of Pepsu
A.I.R. 1954 S.C. 271 : 1954 Cri L.J.727

Material witness

(i) Biabani who was a top-ranking police officer was present at the scene of occurrence was a material witness in the case, so it was the bounden duty on the prosecution to examine him, particularly when no allegation was made that if produced, he would not speak the truth; and in any case, the court would have been well advised to exercise its discretionary powers to examine that witness. The witness was at the time of the trial in charge of the police training school and was certainly available. Not only does an adverse inference arise against the prosecution case from his non-production as a witness in view of illustration (g) to section 114 of the Indian Evidence Act, but the circumstance of his being with held from the court casts a serious reflection on the fairness of the trial. The appellant was considerably prejudiced in his defence by reason of this omission on the part of the prosecution and on the part of the Court-

Note :—The appeal was allowed.

Habeeb Mohammad Vs State of Hyderabad
A.I.R. 1954 S.C. 51 : 1954 Cri. L.J. 338

(ii) Material witness is a witness essential to the unfolding of the narrative on which the prosecution is based.

It is not however that the prosecution is bound to call all witnesses who may have seen the occurrence and so duplicate the evidence. But apart from this, the prosecution should call all material witnesses.

Where a witness arrived after the alleged offences were committed, he could not have given any material evidence. So his non-production will not cast serious reflection on prosecution.

Narain Vs State of Punjab
A.I.R. 1959 S.C. 484 : 1959 Cri. L.J. 537

May

Under S. 190 (1) (b) of the code of criminal Procedure, the magistrate is bound to take cognizance of any cognizable offence brought to his notice. The

(*May-contd*)

words. "May take cognizance" in the content means "must take cognizance". He has no discretion in the matter, otherwise that section will be violative of Art 14 of the constitution.

Where the investigation has not been conducted by the officer required by law, it is open to the magistrate to direct Fresh Investigation by a competent officer.

A.C. Aggerwal Sub-Divisional Magistrate Delhi Vs Ram Kali
A.I R. 1968 S.C. Page 1

Medical Evidence

That if two men armed with spears and two with lathis attacked Sikandar Khan simultaneously, felled him down from the horse and beat him even after he lay prostrate on the ground, it is difficult to believe that the spears would have been used so sparingly or lightly as to cause only mild scratches or very minor incised wounds, neither deep, nor long,or wide. In dealing with the injuries found on Sikandar Khan, the learned Judges say "We don't think that the evidence of witnesses is of such a character as to be inconsistent with the medical evidence". The test rather is whether it is consistent with the medical evidence and, if not, whether the accused should not get the benefit

Note .—Appeal was allowed and the appellant was acquitted.

Kalipada chakraborti Vs Sm Palani Bela Devi
A.I.R. 1953 S C 122

Memorandum

The memorandum prepared by the magistrate describing the present condition of house where the abducted boy was confined and the evidence given on the basis of that memorandum would be relevant U/s 9 of the Evidence Act but the statement of the victim not recorded according to Section 164 Cr. P. C. would be inadmissible.

Deepchand Vs State of Rajasthan
A. I R. 1961 S. C. 1527 : 1961 (2) Cri. L. J. 705

Mensrea

(i) It is no defence merely to allege that the vendor was ignorant of the nature of the substance or quality of the food sold by him. If the owner of a shop in which adulterated food is sold is without proof of mensrea liable to be punished for sale of adulterated food, why an agent or a servant of the owner is not liable to be punished for contravention of the same provision unless he is shown to have guilty knowledge.

Held : The appeal was dismissed.

Note :—Appellant was an employee as a vendor on the oil shop of one T.

Sarjoo Prasad Vs State of Uttar Pradesh
A.I.R. 1961 S. C. 631 :1961 (1) Cri. L.J. 747

(*Mensrea-contd*)

(ii) It is not necessary that mensrea must always be established for the offences under the Factory Act.

State of Gujarat Vs Kansara Manilal Bhikhalal
A.I.R. 1964 S.C. 1893 : 1965 (1) Cri. L. J. 90

(iii) Circumstances under which the gold discovered, the manner in which he (accused) was carrying the gold, the considerable quantity of the gold that was being carried and the form in which gold was being carried and the fact that the accused was not the person who was expected to carry so much gold (286 tolas), all these circumstances establish beyond a shadow of doubt that the accused was carrying the gold knowingly and with the intention of evading prohibition. So mensrea is established. Mensrea can be established and inferred from the circumstances.

Hukma Vs The state of Rajasthan
A.I.R. 1965 S.C. 476 : 1965 (1) Cri. L.J. 369

(iv) In Section 292 of IPC, in the second part of the guilty act (actusreus), namely, the selling or keeping for sale of an object which is found to be obscene. Here, of course, the ordinary guilty intention (mensrea) will be required before the offence can be said to be complete.

As sale has taken place and the appellant is a book-seller, the necessary inference of mensrea is readily drawn at least in this case.

Note:—Appellant was a partner of the firm which was owning book stall in Bombay was prosecuted U/s 292 IPC and the obscene book **"Lady Chatterley's Lover"** was found from hir possession. So Appeal was dismissed.

Ranjit D. Udeshi Vs State of Maharashtra
A.I.R. 1965 S.C. 881 : 1965 (2) Cri. L. J. 8

(v) The law does not become nugatory if element of mensrea was read into it, for there would still be persons who would be bringing into India gold with the knowledge that they would be breaking the law. In such circumstances no question of exclusion of mensrea by necessary implication can arise. The prevention of smuggling would be entirely frustrated if a condition were to be read into S. 8(1) or S. 23 (1-A) of the Act qualifying the plain words of the enactment, that the accused should be proved to have knowledge that he was contravening the law before he could be held to have contravened the provision.

State of Maharashtra Vs Mayer Hang George
1965 S.C. 722 : 1965 Cri. L.J. 641

(vi) The object of the enactment Essential Commodities Act (1955) would not be defeated if mensrea is Head as an ingredient of the offence. It would be

(*Mensrea-contd*)

legitimate to hold that a person commits an offence U/s 7 of the Act if he intentionally contravenes any order made under the Act. So construed, the object of the act will be best served and innocent persons will also be protected from harassment.

Note:—In this case the accused was having a store of 885 mounds grain while under the act one cannot store more than 100 maunds. The accused had already applied for the licence of food grain. This application was not rejected before he was challaned. Held : no mensrea, so no case against the accused.

Mensrea is an essential ingredient of a criminal offence. Doubtless a statute may exclude the element of mensrea, but it is a sound rule of construction adopted in England and also accepted in India to construe a statutory provision creating an offence in conformity with the common law rather than against it unless the statute expressly or by necessary implication excluded mansrea. The mere fact that the object of the statute is to promote welfare activities or to eradicate a grave social evil is by itself not decisive of the question whether the element of guilty mind is excluded from the ingredients of an offence. Mensrea by necessary implication may be excluded from a statute only where it is absolutely clear that the implementation of the object of the statute would otherwise be defeated. The nature of the mensrea that would be implied in a statute creating an offence depends on the object of the act and the provisions thereof.

Nathu Lal Vs State of Madhya Predesh
A I.R. 1966 S C. 43 : 1966 Cri. L J. 71

Merchandise Marks Act

The object of the provisions of sections 13 and 14 of the Merchandise Marks Act is to protect the rights of persons who manufacture and sell goods with distinct trade marks against the invasion of other persons who counter feit their manufactures. Normally, the remedy for such infringement will be by action in Civil Courts. But in view of the delay which is incidental to civil proceedings and the great injustice which might result if the rights of manufacturers are not promptly protected, the law gives them the right to take the matter before the Criminal Courts, and prosecute the offenders, so as to enable them effectively and speedily to vindicate their rights. It is for this reason that a short period of limitation is provided for their preferring a complaint under S. 15 of the Act, and there is also a special provision for award of the costs of the proceedings to or by the complainant.

Note :—The appellant was having "chand chap Biri' bearing counterfeit trade mark. The law was set in motion by a private complaint within one year i.e. prescribed period of limitation, from the date of discovery but

summons were issued after the expiry of limitation. The prosecution is not bad.

Dau Dayal Vs State of Uttar Pradesh
A.I.R. 1959 S.C. 433 : 1959 Cri. L.J. 524

Merchant Shipping Act (1958)

In this appeal it is contended (1) that there was no desertion on the part of the appellants, and (2) even if they be held to have left the ship they were protected by the fact that there was reasonable cause for absenting themselves at the time of the sailing of the ship."

"The matter is governed by the Merchant Shipping Act, 1958. It does not define what is meant by desertion ; but in *Moore v. Canadian Pacific Steamship Co.* [(1945) (1) All England Law Reporters 128] Mr. Justice Lynskey gave a definition of 'desertion' from an early case. The West-morland (2) as follows :—

"I think a deserter is a man who leaves his ship and does not return to it with no other puropose than to break his agreement."

The gist of desertion therefore is the existence of an animus not to return to the ship or, in other words to go against the agreements under which the employment of seamen for sea voyages generally takes place this definition may be taken as a workable proposition for application to the the present case. There is nothing in this case to show that after the seamen left the vessel, they intended to return to it. In fact they went and later took their luggage, because under the law penalty includes forfeiture of the effects left on board. The whole tenor of their conduct, particularly the intervention of labour leaders is indicative of the fact that they left the ship with no intention to return to it unless their demands were met forthwith even though before the Master the company had stated that the matter would be finally considered at the end of the voyage and the termination of the agreement.

Section 161 (1) of the Act is in two parts. The first part deals with only desertion and therefore, if desertion was proved the penalty which the law provides under the Act was duly incurred. There is no excuse against desertion because reasonable cause which is indicated in the same section is included in cl. (b) and not in cl. (a). But even if one were to view their conduct as falling under (b) and not (a) as the courts have held, their cannot be any excuse on their part.

Ibrahim and others Vs State of West Bengal
Criminal Appeal No. 19 of 1965 decided on 21-11-67 DLJ 1968 Sc. N2

Mind

Upto the moment the judgment is delivered Judges have the right to change their mind.

Surendra Singh Vs State of Uttar Pradesh
A I R 1954 S.C. 194 : 1954 Cri. L.J. 475

Ministers

There is no difficulty if two Ministers successively being satisfied that it is necessary to detain a person for different reasons and then their order is carried out by one order of detention duly authenticated.

Godavari S. Parulekar Vs State of Maharashtara
A.I.R. 1966 S.C. 1404 : 1966 Cri. L.J. 1067

Minor Offence

On a charge for a minor offence, there can be no conviction for a major, offence, e.g., grievous hurt or rioting and murder. The omission to frame a separate and specific charge in such cases will be an incurable irregularity amounting to illegality. But a man may be convicted of a minor offence although there has been no charge in respect of it, if the evidence is such as to establish a charge that might have been made.

Note :—In this case appellant was charged u/s 302 read wiih S.34 of IPC but was convicted u/s 302 IPC. The conviction u/s 302 was setaside but the appellant was convicted for a minor offence u/s 304 part II of the Penal code and the sentence was reduced to five years R. I.

Willie Slaney Vs State of Madhya Pradesh
A.I.R. 1956 S.C. 116 : 1956 Cri. L.J. 291

Misappropriation

(i) In order to prove an offence u/s 403 Penal Code the prosecution has to prove that the property was the property of the complainant and that the accused misappropriated that or converted it to his own use and he did so dishonestly.

Note.—The appellant was to carry a prize competition and received money in that connection but did not give prize to any body. Since there was no obligation that the prize money had to come either wholly or in part from out of the sum collected by way of entry fees, so there was no entrustment, If no entrustment, no criminal of breach can be committed.

Held.—The offence is not proved.

Ramaswamy Nadar Vs The State of Madras
A.I.R. 1958 S.C. 56 : 1958 Cri. L J. 228

(ii) In the case of a servent charged with misappropriating the goods of his master the elements of criminal offence of misappropriation will be established if the prosecution proves that the servent received the goods, and that he was under a duty to account to his master and had not done so. If the failure to account was due to an accidental loss then the facts being within the servant's knowledge, it is for him to explain the loss. But if these facts are within the knowledge of the accused then he has to prove them. The giving of false explanation is an element which the Court can take into consideration.

(*Misappropriatian-contd*)

Note :—In this case the appellant received the consignment of goods which came from Tata Nagar. He gave false explanation in the lower court and High Court.

Held :—The accused has been rightly convicted.

Krishan Kumar Vs Union of India
A.I.R. 1959 S.C. 1390 : 1959 Cri L.J.1508

(iii) Conviction of a person for the offence of criminal breach of trust may not, in all cases, be found merely on his failure to account for the property entrusted to him, or over which he has dominion, even when a duty to account is imposed upon him, but where he is unable to account or renders an explanation for his failure to account which is untrue, an inference of misappropriation with dishonest intent may readily be made.

Note:—No information by the appellant was given to the Textile Commissiner that the cloth (in his possession) has been eaten up by the white ants and moths etc. and was therefore thrown away.

Held :—In the absence of explanation, the accused has been rightly convicted.

Jaikrishnadas Manohardas Desai Vs State of Bombay
A.I.R. 1960 S.C. 889 : 1960 Cri L.J 1250

(iv) Police officer while searching the person of the complainant found currency notes. The complainant in handing over the bundle of notes to the police officer must have done so in the confidence that he would get back. As the currency notes were taken by the Sub Inspector in the discharge of his duty and then misappropriated them, has committed the offence of misappropiation i.e , 409 IPC-

State of Uttar Pradesh Vs Babu Ram
A.I.R. 1961 S.C. 751 : 1961(1) Cri. L J. 773

(v) Two persons having authority to operate jointly on the accounts of the company with a bank. One of them delivering blank signed cheque to the other who misappropriated them. The man who gives the cheque does not commit the offence.

R K. Dalmia Vs The Delhi Administration
A.I.R. 1962 S.C. 1821 : 1962(2) Cri. L J. 805

(vi) When one partner is given authority to the other partners to collect money or property of the firm, he is entrusted with dominion over the property, and if he dishonestly misappropriates it, then he commits offence U/s 405 of IPC.

R.K. Dalmia Vs The Delhi Administration
A.I.R. 1962 S.C 1821 : 1962 (2) Cri L.J. 805

(*Misappropriation-contd*)

(vii) Before a person can be said to have committed criminal breach of trust within the meaning of Section 405 IPC it must be established that he was either entrusted with or entrusted with dominion over property which he is said to have converted to his own use. In order to establish entrustment of dominion' over property to an accused person the mere existence of that person's dominion over property is not enough. It must be further shown that his dominion was the result of entrustment.

In the case of partnership, every partner has dominion over the partnership property by reason of the fact that he is a partner. This is a kind of dominion which every owner of property has over his property. But it is not dominion of this kind which satisfied the requirements of section 405 IPC. A partner has undefined ownership along with the other partners over all the assets of the partnership. If he chooses to use any of them for his own purpose he may be accountably civilly to the other partners but he does not thereby commit any criminal missappropriation.

Note:—Appeal was allowed and conviction set-aside.

Velji Raghavji Patel Vs The State of Maharashtra
A.I.R. 1965 S.C. 1433 : 1965 (2) Cri L. J. 431

(viii) The apppellant hired a Estinghouse, D. C. Motor from the Modern Electrical Works (hereinafter referred to as the Works) on April 4, 1958 on a rent of Rs. 40/- per month. The hiring period was to last for at least three moths and it was agreed that if the motor or parts thereof were lost or damaged by the appellant, he would be bound to pay the whole cost of the motor and the parts. On June 8, 1959, the appellant wrote a letter to the works in which he said that he had purchased the motor in question for Rs 600/- on condition that the same would be tried for three months, and if it was found satisfactory the money would be paid and the purchase completed. The appellant said in the letter that the works had been paid Rs. 620/- in all and thus the purchase had been completed. Nothing was done with respect to the use of the property which was not in accordance with the hiring agreement between the parties, it cannot be said that there was missappropriation or conversion of the property or its use or disposal in violation of the con tract. The letter of June 8, merely raises a dispute of civil nature between the parties and there is no question of any criminal breach of trust with respect to the motor on the basis of that letter.

Note .—The appeal was allowed and conviction was set-aside.

Mohammad Sulaiman Vs Md. Ayub
A I.R 1965 S.C. 1319 : 1965(2) Cri. L. J 421

(ix) It is wrong to suggest that an offence under section 409 of Penal Code can

Misappropriation-contd)

never be committed by a public servant while acting in the discharge of his official duty

(A.I R. 1955 S.C. 309 Amrik Singh's case referred)

Baij Nath Vs State of Madhya Pradesh
A.I.R. 1966 S.C. 220 : 1966 Cri. L.J. 189

(x) The appellant had been prosecuted for the various misappropriations alleged to have been committed by him. Each one of those misappropriations is a distinct offence by itself : therefore it was open to the court to seperately charge him and separately try him for those offences. Normal rule in respect of trial of criminal cases is that laid down in s. 233. S 222 provides that when an accused is charged with a criminal breach of trust or dishonest misappropriation of money, it would be sufficient to specify the gross sum in respect of which the offence is alleged to have been committed and the dates between which the offence is alleged to have been committed without specifying particular items or the exact dates and the charge so framed shall be deemed to be a charge of one offence within the meaning of s. 234 provided that the time included between the first and the last of such dates does not exceed one year. That is only an enabling provision. It is not incumbent on the prosecution to have recourse to that provision. As seen earlier, the prosecution did not have recourse to that provision while prosecuting the appellant in the earlier batch of cases. Sub S.403, Cr.P.C. specifically provides that a person acquitted or convicted of any offence may afterward be tried for a distinct offence for which a separate charge might have been made against him on the former trial. It is not disputed that in respect of the offences for which the appellant was tried and convicted or acquitted, separate charges might have been made against him. Therefore, there is no basis for the plea that the prosecutions with which we are concerned in this case are hit by S. 403(1) Cr.P.C.

Held:—"Those prosecutions were launched against him as far back as 1957. But the cases with which we are concerned were launched in 1961 after the appellant served out the sentences imposed on him in the earlier cases. If the prosecutions with which we are concerned now had been launched against him along with the other prosecutions then even if he should have been convicted in those cases, it was most likely that the sentences that might have been awarded to him would have been orderd to run concurrently. That apart, the fresh batch of prosecutions have been launched nearly four years after the earlier prosecutions were launched. Under those circumstances it would not be in the interest of justice to allow those prosecutions to go on.

Jai Dev Vs Punjab State
Criminal appeal No. 57 of 1965 Decided on 15-11-67 DLJ 1968 SCN 13

Miscarriage of justice

The entire investigation was done by a sub-inspector of police and thereafter the case under Ss. 409/406 of the Indian Penal Code was instituted against the appellant, his brother and the Executive Officer. That case was later on withdrawn and it was thereafter that sanction was granted for the prosecution of the appellant and his brother under S. 5 (2) of the Act and investigation was made as required by Section 5A. But the evidence shows that this investigation merely consisted of this that the duly authorised investigating officer went through the papers of the earlier investigation and decided to file four prosecutions as already indicated on the basis of the earlier investigation.

Even if there was irregularity in the investigation and S 5A was not complied with in substance, the trials cannot be held to be illegal unless it is shown that miscarriage of justice has been caused on account of the illegal investigation

Note :—In this case no objection of prejudice was taken at the trial. So the appellant cannot say that the trial is vitiated unless prejudice is shown. There is no prejudice even. So appeal is dismissed.

Munnalal Vs State of Uttar Pradesh
A.I.R. 1964 S. C. 28 : 1964 (1) Cri. L. J. 11

Misconducting

It is not necessary for an accused person under clause (d) of section 5 (1), while misconducting himself, should have done so in the discharge of duty and thereby obtain any valuable thing or pecuniary advantage. If a public servant takes money from third party by corrupt or illegal means or otherwise abusing his official position, in order to corrupt some other public servant, he commits offence u/s 5 (1 (d) read with section 5 (2) of the Prevention of Corruption Act.

Note :—Appellant was a U.D.C in the office of Chief Commissioner in Delhi and the chief prosecution witness R.—contacted the appellant for the licence of double-barrelled gun, who (appellant) had nothing to do with the issuing of licence. Appellant received Rs. 250 for getting licence to the appellant so the appellant criminally misconducted himself.

Note :—State of Ajmer vs. Shiv Lal (1959) Supp (2) SCR 739. AIR 1959 S.C. 847 was over—ruled by this judgment decided by full bench consisting of seven judges). Appeal was dismissed.

Dhaneshwar Narain Sexena Vs The Delhi Administration
A.I.R. 1962 S.C. 195 : 1962 (1) Cri. L.J. 203

Mischief

The appellant is said to have instigated Jodha Singh to commit the offence of mischief under S. 436 I P.C. Jodha Singh has been acquitted of the offence under S. 436. It can therefore, be said that he did not set fire to the hut of Baishaki. The appellant's instigating Jodha to commit the offence under S. 436 I.P.C. did amount to his abetting the offence under S. 436 and he would therefore, be guilty of the offence of abetment under S. 115 I P.C. Since Jodha Singh did not commit the offence, it may be mentioned that Baishaki's hut was actually set on fire by someone, but another's setting fire not on the instigation of the appellant will not make the appellant guilty of abetment under S. 109 I.P.C. as the setting on fire by another was not in consequence of the abetment. The appellant will therefore, not be guilty of the offence of abetment under S. 436 I.P.C. read with S. 109, but will be guilty of the offence of S. 436 read with S. 115 I.P.C.

Note :—Sentence from 436/109 to 436/155 was converted and was reduced to 4 years R.I.

Jumna Singh Vs State of Bihar
A.I.R. 1967 S.C. 553 : 1967 Cri. L J. 541

Misdirection

(1) Where there is a misdirection to the Jury the simplest course open to Supreme Court is to order a retrial of the accused. It is also open to it to remit the case to High Court with a direction that it should consider the merits of the case in the light of Supreme Courts decision and say whether there has been a failure of justice as a result of these mis-directions. Lastly it is also open to the Supreme Court to examine the case and decide for itself whether there has been a failure of justice in the case and an innocent man has been convicted.

Held :—That there has been a grave failure of justice in this case and the appellant, an innocent man, has been convicted of a serious offence on a verdict of the jury arrived at in all likelihood on the basis of conjectures and that that verdict was the consequence of the misdirection given to the jury by the Judge.

Note :—Their Lordships adopted the last course and examined the record themselves.

Mushtak Hussein Vs The State of Bombay
A.I.R. 1953 S.C. 282 : 1953 Cri. L.J. 1127

(ii) The admission of inadmissible evidence would amount to a misdirection in the Judge's charge to the jury.

Ram Kishan Mithanlal Vs State of Bombay
A.I.R. 1955 S.C. 104 : 1955 Cri. L J. 196

(*Misdirection-contd*)

(iii) Where the judge has not directed to the jury that even though "a person may not be present when the offence is actually committed and even if he remains behind the screen he can be convicted u/s 34 I.P C. provided the common intention is proved," it amoun's to misdirection and there was a miscarriage of justice.

A.I.R. 1955 S.C. 287 : 1955 Cri. L J. 857

(iv) Unless there was a misdirection or non-direction amounting to a misdirection in the charge to the jury which, in fact, had occasioned a failure of justice the jury's verdict must prevail and it cannot be interfered with.

Jnanendra Nath Ghose Vs State of West Bengal
A.I.R. 1959 S.C. 1199 : 1959 Cri. L J. 1492

(v) As the accused had put forward a case of accident, it was incumbent upon the trial judge to explain Section 304-A and 338 of the Penal Code to the jury and in so for as he failed to do so there was misdirection which resulted in a perverse verdict occasioning a failure of justice.

Shibraj Singh Vs State of West Bengal
A.I.R. 1959 S C. 1173 : 1959 Cri. L. J. 1488

(vi) Supreme Court will not interfere unless something gross amounting to a complete misdirection of the whole bearing of the evidence has occurred

Smt. Naginder Bala Mitra Vs Sunil Chander Roy
A I.R: 1960 S.C. 706 : 1960 Cri. L.J. 1020

Sessions Judge pointed out that the case depended upon circumstantial evidence and that the jury should apply the rule of circumstantial evidence settled by decisions. Though at one place he emphasized upon the evidentiary value of a confession, he later on included that confession also as one of the circumstances and again directed the jury to apply the rule of circumstantial evidence. It is not disputed that the extra-judicial confession made to Puran Singh is direct piece of evidence and that the stringent rule of approach to circumstantial evidence does not apply to it. If that confession was true, it cannot be disputed that the approach of the jury to the evidence would be different from that if that was excluded. It is not possible to predicate that the jury did not accept that confession and therefore applied the rule of circumstantial evidence. It may well have been that the jury accepted it and still were guided by the rule of circumstantial evidence as pointed out by the learned Sessions Judge.

(Mis-direction-contd)

Held —That in these circumstances this is a grave mis-direction effecting the correctness of the verdict.

K. M. Nanavati Vs State of Maharashtra
A.I.R. 1962 S.C. 605 : 1962(1) Cri. L. J. 521

(viii) Where the Session judge did not tell in his charge to the jury that such evidence was not admissible and the jury gave verdict on all the evidence, this also amounts to mis-direction and same vitiates the trial.

A.I.R 1962 S C. 605 : 1962 (1) Cri. L J. 521

(ix) Sessions Judge drawn the attention of jury only to that portion of the statement of the accused which led to the discovery of the skelton and knife.

Held:—It was no misdirection to the jury.

Note—1947 P.C. 67 and U. P. Versus Deoman
A.I R. 1960 S.C. 1125 approved

Ram Lochan Atur Vs State of West Bengal
A.I R. 1963 S.C. 1074 1963 Cri. L J. 170

Mis-Joinder

(i) The fact that the offence of extortion was committed at a different place and at different time does not anytheless make the act as one committed in the course of the same transaction. This proposition falls squarely within the purview of S. 235 of the Criminal procedure code. So such misjoinder is premitted by the exception.

Aftab Ahmad Khan Vs The State of Hyderabad
A.I.R. 1954 S.C. 436 : 1954 Cri. L.J. 1155

(ii) Misjoinder of charges is sometimes curable. as it is mere irregularity.

Aftab Ahmad Khan Vs the State of Hyderabad
A I.R. 1954 S.C. 436 : 1954 Cri. L. J. 1155

Where the question about the misjoinder of charges was not raised in the High Court and was not taken in a petition for special leave. It cannot be permitted to raise at the stage of hearing the appeal.

Mangal Singh Vs State of Madhya Pradesh
A.I.R. 1957 S C. 199 : 1957 Cri L. J. 325

(iii) The fact that in the course of years others joined the conspiracy or that several incidents of cheating took place in pursuance of the conspiracy did not change the conspiracy and did not split up a single conspiracy into several conspiracies The instances of cheating were in pursuance of the conspiracy and were therefore parts of the same transaction.

(*Mis-joinder-contd*)

Held,—No merit in the appeal. Conviction was maintained.

S. Swamirathnam Vs State of Madras
A.I R. 1957 S.C. 340 : 1957 Cri. L. J. 422

(iv) Where the objection is not taken at trial High Court is not competent to interfere unless it has occasioned a failure of justice. Even if it is assumed that there has been a misjoinder of charges in violation of the provisions of Ss. 233 to 339 of the Code, the High Court was incompetent to set aside the conviction of the respondents without coming to the definite conclusion that misjoinder has occasioned a failure of justice. Merely because the accused persons are charged with a large number of offences and convicted at the trial, the conviction cannot be set aside by the appellate court unless it in fact came to the conclusion that the accused persons were embarrassed in their defence and with the result there was a failure of justice.

Held :—The findings of the Lower Court cannot be set-aside on the grounds of misjoinder of charges and multiplicity of charges.

Note:—The case was remanded for retrial on other grounds.

The State of Andhra Pradesh Vs Cheemalapati GaneswaraRao
A.I.R. 1963 S.C. 1850 : 1963 (2)Cri. L J. 561

Misrepresentation

V represented herself as N to the insurance company, got the claim of N who was the minor daughter of V. No injury to the Company. So No offence U/s 467,468 IPC. by V was committed

Note :—Appeal was allowed and conviction was set-aside.

Dr. Vimla Vs The Delhi Administration.
A.I.R. 1963 S.C. 1572 : 1963 (2) Cri L.J. 434

Mitigating circumstance

Merely because a son uses a pistol and causes the death of another at the instance of his father is no mitigating circumstance which the courts would take into consideration.

Note :—Death sentence was maintained.

Miyaji Vs State of U. P.
A.I.R. 1959 S.C. 572 : 1959 Cri. L. J. 777

Mode of proof

There is no difference between the mode of proof of the offence of conspiracy and that of any other offence. It can be established by direct evidence or by

circumstantial evidence. But S. 10 of the Evidence Act introduces the doctrine of agency and if the conditions laid down therein are satisfied, the act done by one is admissible against the co-conspirators.

It can only be used for the purpose of proving the extistence of the conspiracy or that the other person was a party to it. It cannot be used in favour of the other party or for the purpose of showing that such a person was not a party to the conspiracy.

Bhagwan Swarp Vs The State of Maharasthra
A.I.R. 1965 S.C. 682 : 1965 Cri L J. 608

Modern Needs

It is legitimate to construe the code with reference to modern needs, where-ever this is permissible, unless there is any thing in the code or in the parti-cular section to indicate the contrary.

Mobarik Ali Ahmed Vs State of Bombay
A.I R. 1957 S. C. 857 : 1957 Cri. L J. 1346

Modesty

Facts:—Accused caused injury to the Private parts of a female child of seven and half months

Held by majority

That the offence U/s 354 of Penal Code does not depend on the reaction of the women subjected to the assault on use of criminal force. The words used in the section are that the act has to be done intending to outrage or know-ing it to be likely that he will thereby outrage her modesty. This intention or the knowledge is the ingredient of the offence and not the women's feeling.

Note :—The accused was awarded R. I. for two years and a fine of Rs. 1000/-

State of Punjab Vs Major Singh
A.I.R. 1967 S.C. 63 : (Jan. Part) 1967 Cri. L. J. (1) 68 PLR 794

Moral Turpitude

To have the effect of an acquittal the offence compounded must be one speci-fied either under sub section (1) or sub-section (2) of S. 345 Cr. P.C. The principle behind the scheme seems to be that wrongs of certain classes which effect mainly a person in his individual capacity or character may be sufficient-ly redressed by composition with or without the leave of the Court, as the case may be but any such composition would have the effect of an acquittal.

If a person is charged with an offence, then unless there is some provision for composition of it the law must take its course and the charge enquired into resulting either in conviction or acquittal. **If composition of an offence was permissible under the law, the effect of such composition would**

(*Moral Turpitude-contd*)

depend on what the law provided for. If the effect of composition is to amount to an acquittal then it may be said that no stigma should attach to the character of the person, but unless that is expressly provided for, the mere rendering of compensation would not amount to the vindication of the charactor of the person charged with the offence.

The effect of S. 62 of the Assam Forest Regulation is not the same as that of Section 345 (a) of the Criminal Procedure Code and the moral turpitude was involved.

Note :—Appeal of the department *i. e.* the Board of Revenue was allowed and the Board was declared justified in taking departmental steps inspite of acquittal based on composition.

Biswathan Das Vs Gehon Chandra Hayrik
A.I.R. 1967 S.C. 895 : 1967 Cri. L.J. 828 (June Part)

Motive

(i) No doubt a public officer has no right to demand any bribe; but when he is hauled up before a criminal court to answer a charge of having taken illegal gratification, the question whether any motive for payment or acceptance of bribe at all existed is certainly a relevant and a material fact for consideration.

Madan Mohan Singh Vs State of Uttar Pradesh
A.I.R. 1954 S.C. 637 : 1954 Cri. L.J. 1636

(ii) If the public servant who receives the money takes it by holding that he will render assistance to the giver "with any other public servant" and the giver gives the money under that belief. It may be that the receiver of money is in fact not in a position to render that assistance and is aware of it. He may not even intended to do so. He may accordingly be guilty of cheating. Nontheless he is guilty of the offence U/s 161 IPC.

Mahesh Prasad Vs State of Uttar Pradesh
A.I.R. 1955 S.C. 70 : 1955 Cri, L J. 249

(iii) The accucsed may have had an eye on the handsome wife of the deceased and had already developed a liaison with her, it cannot be said that these circumstances are not sufficient motive for the dastardly crime.

Sunder Singh Vs State of Uttar Pradesh
A.I.R. 1956 S.C. 411 1956 Cri. L J. 801

(iv) Where the positive evidence against the accused is clear, cogent and reliable, the question of motive is of no importance.

Gurcharn Singh and another Vs State af Punjab
A.I.R. 1956 S C. 460 : 1956 Cri. L.J. 827

(*Motive-contd*)

(v) The mere fact that one of the assailants was not connected with the dispute about the plot of the land is not sufficient to hold that he could not have formed a common intention with the others when he went with them armed.

Note :—12 persons took part in occurrence. 10 out of them were acquitted. Two were convicted u/s 302 IPC read with 149 IPC Conviction under these circumstances was converted into one u/s 302 read with 34 IPC. Sentence was maintained.

Kartar Singh Vs State of Punjab

A.I.R. 1961 S.C. 1787 : 1961 (2) Cri L.J. 853

(vi) The motive behind a crime is a relevant fact of which evidence can be given. The absence of a motive is also a circumstance which is relevant for assessing the evidence The circumstances which have been mentioned as proving the guilt of the accused are however not weakened at all by this fact that the motive has not been established. It offen happens that **only the culprit himself knows what moved him to a certain course of action.** This case appears to be one like that.

Note:—The death sentence was maintained. In this case a child was murdered and the conviction rested mainly on circumstantial evidence.

Rajinder Kumar Vs State of Punjab
A.I.R. 1966 S.C. 1322 (Page 1324) : 1966 Cri. L.J. 960

Mother

Whether the mother can be regarded as independent witness-All mothers may not be sufficiently independent to fulfill the reqirements of corroboration rule but there is no legal bar to exclude them from its operation on the ground of their relationship. The corroboration need not be direct evidence that the accused committed the crime. It is sufficient if it is merely circumstantial evidence of his connection with the crime. Were it otherwise, "many crimes which are usually committed between accomplices in secret, such as incest, offences with females" (or unnatural offences) "could never be brought to justice."

Note.—In a case reported in AIR 1952 S.C. 54 a girl of 8 years was raped by the accused. She narrated the incident to mother. It was relied upon. The conviction was maintained.

Rameshwar Vs The State of Rajasthan
A I.R. 1952 S.C. 54 : 1952 Cri. L.J. 547

Motor Vehicle Act

(i) Section 130 of Motor Vehicle Act was enacted with a view to protect from harassment a person guilty of a minor infraction of the Motor Vehicle Act

(Motor Vehicle Act-contd)

or the Rules framed thereunder by dispensing with his presence before the Magistrate and in appropriate cases giving him an option to plead guilty to charge and to remit the amount which can in no case exceed Rs. 25.

Puran Singh Vs The State of Madhya Pradesh
A.I.R. 1965 S.C. 1583

(ii) It would be difficult to hold that the Legistature could have intended that irrespective of the seriousness or gravity of the offence committed, the offender would be entitled to compound the offence by paying the amount specified in the summons. The Magistrate is not obliged in offences not specified in Part A of the Fifth Schedule to make an endorsement in terms of cl. (b) of sub-s (1) of S. 130 of the Act.

Puran Singh Vs The State of Madhya Pradesh
A.I R. 1965 S.C. 1583

(iii) The owner of a motor car carried 8 passengers in his car and collected Rs. 5/- from each of them. He was charged sheeted under section 42 (1) read with Section 123 of the Motor vehicle act for having used the said car as "transport vehicle" without the permit required under S. 42 (i) of the Act.

Held:—The combined effect of S. 42 (1) and the definitions of a 'motor vehicle' a 'public service vehicle' and a 'transport vehicle' is that if a motor vehicle is used as a tansport vehicle, the owner who so uses it or permits it to be so used is required to obtain the necessary permit. It is the use of the motor vehicle for carrying passengers for hire or reward which determines the application of S. 42(1). Therefore, whenever it is so used without the permit there is an infringment of the sub-section.

Note:—The order of acquittal following the ruling 1962 (2) Cr. L.J. 707 and confirmed by the High Court was set aside

Note 2:—The ruling of the Mysore High Court 1962(2) Cr. L.J. 707 was declared incorrect.

The State of Mysore Vs Syed Ibrahim
A.I.R. 1967 S.C. 1424 (September Part) :1967 Cri L J. 1215

Murder

From the solitary circumstance of the unexplained recovery of the two articles from the house of the accused the only inference that can be raised is that they are either receiver of stolen property or were persons who committed theft, but it does not necessarily indicate that the theft and the murder took place at one and the same time.

Sanwat Khan Vs State of Rajasthan
A.I.R. 1956 S.C. 54 : 1956 Cri. L. J. 150

Muttering

P, ws. saw the accused going out of the house at about 6 a. m. (when the off ence was committed in the early hours of the day) soliloquying that he had "finished his daughter in law and thereby finished the daily quarrells" These words were heard by the witnesses.

Held:—A statement which the prisoner had been over heard muttering to himself, if otherwise then in his sleep is admissable against him, if independently proved.

Note :—The sentence of death was upheld.

Sahoo Vs State of Uttar Pradesh
A.I.R. 1966 S.C. 40

"N"

Natural Justice

The law requires that Tribunal should observe rules of natural justice in the conduct of inquiry. Natural justice requires that a party should have the opportunity of adducing all relevant evidence on which he relies and that the evidence of the opponent should be taken in his presence and that opportunity for cross-examination be given.

Note :—In the case reported in A.I R. 1957 S.C. 882 there was no breach of natural justice.

Union of India Vs T R. Varma
A.I R. 1957 S.C 882

Nature of Proceedings

The proceedings under section 488 of Cr. P.C. are in the nature of civil proceedings, the remedy is a summary one.

Ukha Robhe Vs The State of Maharashtra
A.I.R. 1963 S.C. 1521 : 1963 (2) Cri. L.J. 41?

Negligence

A trespasser does not entitle the owner or occupier to inflict on him personal injury by direct or indirect violence.

The voltage of the current passing through the naked wire being high enough to be lethal, there could be no dispute that charging it with current of that voltage was a 'rash act' done in reckless disregard of the serious consequences to people coming in contact with it.

Cherubin Gregory Vs The State of Bihar
A.I.R, 1964 S.C. 205 : 1964(1) Cri. L.J. 138

Negligent Omission

There can be no doubt that the omission of the appellant to take proper care with burners in particular when such combustible matter as turpentine in large quantity was stored at a distance of 8 to 10 feet from the burners was such omission as amounted to insufficient guard against probabled anger to human life. Finally when we remember that all this was done in breach of the gen-

(*Negligent Omissission-contd*)

ral and special conditions of the licence given to the appellant for storage of turpentine, varnish and paints, there is no doubt that the appellant knowingly, or at least negligently, failed to take such orders with fire and the combustible matter as would be sufficient to guard against any probable danger to human life. In the circumstances the appellant has been rightly convicted under section 285 of the Indian Penal Code. The deaths are not directly the result of rash and negligent act of the appellant. So the appellant canno be convicted U/s 304-A I.P.C.

Kurban Hussein Mohammed Ali Rangawala Vs State of Maharashtrat
A.I.R. 1965 S.C. 1616

New Plea

Plea of sanction of the Government U/s 198 B Cr. P. C. cannot be raised for the first time during the hearing of the appeal.

Sahib Singh Vs State of Uttar Pradesh
A.I.R· 1965 S. C. 1451 : 1965 (1) Cri. L.J. 434

New Point

The objection that due to the non-compliance of the provisions of Section 342 Cr.P.C. the accused has suffered cannot be raised for the first time in the Supreme Court.

Radha Kishan Vs State of Uttar Pradesh
A.I.R. 1963 S.C. 822 : 1963 (1) Cri.L.J 809

Night

When the witnesses were suddenly roused from their sleep in the early part of the dark night without any previous apprehension, it would be difficult for them to notice the assailants and their actions.

Note.—The witnesses were disbelieved and the appeal was allowed. Conviction was set-aside.

Mohinder Singh Vs State of Punjab.
A.I.R. 1955 S.C. 762 : 1955 Cri. L.J. 1542

Noise

If a trade like auctioning which has to be carried on as necessary for the well being of the community, some amount of noise has to be borne in at least that part of the town where such trade is ordinarily carried on. In making the provisions of S. 133 of the Code of Criminal Procedure, the legislature cannot have intended the stoppage of such trades in such part of town, merely because of the ',discomfort" caused by the noise in carrying on the trade. Therefore, the slight disocmfort that may be casued to some people passing by the road or living in the neighbourhood cannot ordinarily be

Noise-contd)

considered to be such as to justify action under S. 133 of the Code of Criminal Procedure.

Ram Autar Vs State of Uttar Pradesh
A.I.R. 1962 S.C. 1794

Non-cognizable

(i) Where the information discloses a cognizable as well as non-cognizable offence the police officer is not debarred from investigating any non-cognizable offence which may arise out of the same facts. He can include the non-cognizable offence in the chargesheet which he presents for a cognizable offence. Police investigated an offence u/s 7 of Essential Supplies Act alongwith Section 420 IPC. The trial conld proceed for the said offence u/s 251 A Cr.P.C. and the investigation is valid.

Note:—Kindly see cognizable for Non-cognizable.

Pravin Chandera Mody. Vs. State of Andhra Pradesh
A.I.R. 1965 S.C. 1185 : 1965 (2) Cri. L.J. 250

Non-compliance

(i) Non-compliance with the provisions contained in section 173(2) and section 207 A (3) has not the result of vitiating those proceedings and subsequent trial. The word 'shall' **occurring** both in sub section 4 of 173 and sub section 3 of section 207 A is not mandatory but only directory. It is merely irregularity which is curable by reference to S. 537 of the Criminal Procedure Code when no case of prejudice has been made out.

Narayan Kao Vs State of Andhra Pradesh
A.I R. 1957 S.C. 737

(ii) In a case covered by such section 5 of section 472 A of Cr. P.C. the terms of both such sections (1) and (5) have to be complied with, even if the appellate court wishes to make complaint. Non-compliance of it is fatal.

Dr. B. K. Pal Vs State of Assam
A I.R. 1960 S.C. 133 : 1960 Cri L.J. 174

(iii) The breach of every provision of the Code does not necessarily make the trial invalid. A charge for criminal breach of trust framed in contravention of the proviso to section 222(2) Cr.P.C. is merely an irregularity which can be cured both under sections 225 and 537 and will not vitiate the trial when the accused is not prejudiced,

Note:—Charges for misappropriations over a year were included in one trial This defect is curable U/s 225 and 537 Cr.P.C.

Kadiri Kunhahammad Vs State of Madras
A.I.R. 1960 S.C. 661 : 1960 Cri. L.J. 1013

(Non-compliance-contd)

(iv) The requirement of the law that the investigation in cases against the police for torture and causing death has to be conducted by a person of the rank of Assistant or Deputy Superintendent of Police or by sub divisional magistrate is merely directory and not mandatory. Non-compliance of it does not make the investigation of the case illegal.

The State of Andhra Pradesh Vs N. Venugopal
A.I.R. 1964 S.C. 33 : 1964 (1) Cri. L J. 16

Non-direction

Jury was asked to disbelieve evidence as to receipt of price No direction in the matter of evidence of motive. Held there was non-direction which might have caused a miscarriage of justice.

A.I.R. 1955 S.C. 287 : 1955 Cri. L J. 857

Non-production

The prosecution should call all the material witnesses and if the material witness has been deliberately or unfairly kept back, then a serious reflection is cast on the propriety of the trial itself and the validity of the conviction resulting from it may be open to challenge.

Note:—In this case (1959 S.C. 484) the witness left was not material so the appeal was dismissed and the conviction was upheld.

Narain Vs State of Punjab
A.I.R. 1959 S.C. 484 : 1959 Cri.L.J 557

Non-user

There is no doubt that the legislative intent of the control order is that this essential commodity should be utilised in accordance with conditions contained in the permit, but no clause in this control order evinces a legislative intent that non-user is also prohibited and made punishable

State of U. P. Vs Ramagya Sharma Vaidy
A.I.R. 1966 S.C. 78

Notification

(i) Where a notification denies certain rights to certain individuals while retaining the right in the case of other individuals who have committed the same or similar offence is against the provisions of Art 14 of the Constitution.

Dhirendra Kumar Vs Superintendent and Remembrancer of Legal Affairs of the Govt. of West Bengal
A.I.R. 1954 S.C. 424 : 1954 Cri. L.J. 1036

(ii) The validity of a notification issued by the State, it being law, is as much vulnerable to attack as that a fact.

Madhubhai Amathalal Vs Union of India
A.I.R. 1961 S. C. 21

(*Notification-contd*)

(iii) The transfer of Sh. Bhalla and handing over the charge to Sh. Lal Singh who will hold the current charge of the office of the Deputy Commissioner, Amritsar Sh Lal Singh could not and did not become the District Magistrate of Amritsar in the absence of a notification U/s 10(1) of the Criminal Procedure Code by the State Government Notification need not recite in terms that it was made under Section 10(1) of Cr. P.C. Order of State Government appointing an officer District Magistrate of a district is sufficient In the absence of such an order no officer in the District can claim to be District Magistrate

Ajaib Singh Vs Gurbachan Singh
A.I R 1965 S C 1619

(iv) Instructions cannot take the place of a notification.

Ajaib Singh Vs Gurbachan Singh
A I.R. 1965 S C 1619

Notice

(i) In notice U/s 488 of Calcutta Municipal Act, the substance and not form that has to be regarded.

Nani Gopal Biswas Vs Municipality of Howrah
A.I R. 1958 S.C. 141 1958 Cri. L.J. 271

(ii) Section 422 of Criminal Procedure Code requires notice to be given to accused and not service on accused where the appellate court is intimated that the accused has entered appearance and had notice of appeal filed against him and the court is requested not to issue summon. IT MUST BE held that the accused had notice of appeal and section 422 was complied with.

Mohammed Dastagir Vs The State of Madras
A.I.R. 1960 S.C. 756 1960 Cri L J. 1159

(iii) A perusal of clause (b) of Section 52 of Factories Act (1948) makes it abundently clear that what is required to be thereunder, that is to say, to give and display a notice is only for the purpose of securing an exemption from the prohibition contained in the opening parts of Section 52 of the Act.

John Douglas Keith Brown Vs State of West Bengal
A.I R. 1965 S.C. 1341 . 1965 (2) Cri. L.J. 423

Nuisance

Note —Pl See —Noise.

Ram Autar Vs State of Uttar Pradesh
A.I.R. 1962 S.C. 1794

Number of witnesses

(i) In a murder case, the court should insist upon plurality of witnesses but 'Evidence has to be weighed and not counted. Our legislature has given statutory recognition to the fact that administration of justice may be hampered if a particular number of witnesses were to be insisted upon. It is not seldom that a crime has been committed in the presence of only one witnesses, as in the present case. Court is concerned with the quality and not with the qnantity of the evidence necessary for proving or disproving a fact. It is the duty of the court to convict, if it is satisfied, that the testimony of a single witness is entirely reliable.

Note :—Death sentence was upheld on the bases of testimony of single witness.

A.I.R 1957 S.C. 614 : 1957 Cri. L.J. 1000

(ii) Where a criminal Court has to deal with evidence pertaining to the commission of an offence involving a large number of offenders and a large number of victims, it is usual to adopt the test that conviction could be sustained only if it is supported by two or three or more witnesses who give a consistant account of the incident.

Masalti etc Vs The State of Uttar Pradesh
A.I R 1965 S.C 202 : 1965 (1)Cri. L J. 226

"O"

Oath

An omission to administer an oath even to an adult goes only to the credibility of the witness and not his competency. The Oath Act does not deal with competency and under S. 13 of the Act omission to take oath does not affect the admissiblity of the evidence. Omission amounts to an irregularity-which is curable and does not affect the admissiblity of the evidence of child witness.

Rameshwar Vs The State of Rajasthan
A.J.R. 1952 S.C. 54 : 1952 Cri. L.J. 547

Obscene

The question whether the book is obscene or not does not altogether depend on oral evidence of a writer and Art Critic because the offending noval and the portions which are the subject of the charge must be judged of by the court, in the light of section 292, and the provisions of the constitution A balance should be maintained between freedom of speech and expression and public decency and morality but when the latter is substantially transgressed the former must give way. Obscenity without a preponderating social purpose or profit cannot have the constitutional protection of free speech and expression and obscenity is treating with sex in a manner appealing to the carnal side of human nature, or having that tendency Such a treating with sex is offensive to modesty and decency but the extent of such appeal in a particular book etc. are matters for consideration in each individual case.

Note:—In this case appellant was found in possession for the purpose of sale copies of "Lady Chatterley's Lover". It was declared obscene and appeal was dismissed.

Ranjit D. Udeshi Vs The State of Maharashtra
A.I.R. 1965 S.C. 881 : 1965 (2) Cri. L.J. 8

Object of Provisions

(i) The object of the provisions of sections 13 and 14 Merchandise Marks Act is to protect the rights of persons who manufacture and sell goods with distinct trade marks against the invasion of persons passing off their goods fraudulently and with counterfeit trade marks.

Dau Dayal Vs State of Uttar Pradesh
A.I.R. 1959 S.C. 433 : 1959 Cri. L.J 524

(ii) The object of Drug Act is to prevent Sub-standards in drugs, presumably for maintaining high standards of medical treatment.

Chiman Lal Vs State of Maharashtra
A.I.R. 1963 S C. 665. 1963 (1) Cri. L.J. 621

(iii) The object of the enactment Essential Commodities Act (1955) would not be defeated if mensrea is Head as an ingredient of the offence. It would be legitimate to hold that a person commits an offence U/s57 of the Act if he intentionally contravenes any order made U/s 3 of the Act. So construed the object of the act will be best served and innocent persons will also be protected from harassment.

Note:—In this case the accused was having a store of 885 mounds grain while under the act one cannot store more than 100 maunds The accused had already applied for the licence of food grain. This application was not rejected before he was challaned. Held no mensrea, so no case against the accused.

Nathu Lal Vs State of Madhya Pradesh
A.I.R. 1966 S.C 43 : 1966 Cri. L.J. 71

Object of Enquiry

(iv) The object of enquiry U/s 202 (1) Cr P C. is to ascertain the truth or falsehood of the complaint, the magistrate is to ascertain the same only with reference to the intrinsic quality of the statements before him and not besides this.

Chandra Deo Singh Vs Prakash Chandra Bose
A.I.R. 1963 S.C. 1430 : 1963(2) Cri. L.J. 397

(v) Object of section 5A of the Prevention of Corruption Act, 1947 is to prevent the harassment to a Government servant and so investigation except, with the previous permission of a magistrate, is not permitted to be made by an officer below the rank of a Deputy Superintendent of Police

State of Uttar Pradesh Vs Bhagwant Kishore Joshi
A I R. 1964 S C. 221 : 1964(1) Cri L.J. 140

Objection

Where the objection that the investigation had been made by an officer below

(*Objection contd*)

the rank of Deputy Superintendent of Police in contravention of the provision of the Prevention of Corruption Act had not been raised before the High Court, it cannot be raised before the Supreme Court in appeal by special leave.

Din Dayal Vs The State of U.P.
A.I R. 1959 S.C 831 : 1959 Cri. L.J. 1120

Observation

(i) Observations by a judge of eminence in Privy council are entitled to great weight.

A.I.R. 1955 S.C. 274 : 1955 Cri L J. 721

(ii) A Judge is certainly not entitled to allow his view or observation to take the place of evidence because such view or observation of his cannot be tested by cross-examination and the accused cannot furnish any explanation to that. So the judge cannot incorporate his observation or views in the judgment and base his conclusion on the same

Pritam Singh Vs The State of Punjab.
A I R. 1956 S C 415 . 1956 Cri L.J 805

(iii) A judge cannot make the sweeping and general observation against the entire body when the case before him is of an individual.

Note:—In this case justice Mulla of Allahabad High Court made sweeping remarks against the entire police. The observations were expunged by the Supreme Court.

The State of Uttar Pradesh Vs Mohammad Naim
A I R. 1964 S C 703 1964(1) Cri L.J. 549.

Obstruction

(i) Obstruction to officer executing search warrant, The officer has the right to use reasonable means to remove the obstruction or overcome the resistence.

Matajog Dobey Vs H.C. Bhari
A.I.R 1956 S.C. 44 : 1956 Cri. L. J. 140

ii) Merely because of the carts causing obstruction which are being brought in connection with the auctioning, they (persons carrying on auctioning) cannot be considered to be causing obstruction. So S. 133 Cr. P.C. is not applicable.

Ram Autar Vs State of Uttar Pradesh
A.I R. 1962 S C. 1794

Obtains

The word obtains in section 5(1)(d) of Prevention of Corruption Act does not eliminate the idea of acceptance of what is given or offered to be given.

though it connotes also an element of effort on the part of the receiver. If a man obtains a pecuniary advantage by the abuse of his position, he will be guilty under sub clause (d) of Section 5(1).

Ram Krishan Vs State of Delhi
A.I R. 1956 S.C. 476 : 1956 Cri. L.J. 837

Offence

An Offence seldom consists of a single act. It is usually composed of several elements and as a rule, a whole series of acts must be proved before it can be established.

A.I R. 1955 S C. 287 . 1955 Cri. L.J. 857

(ii) The very fact of conspiracy constitutes the offence and it is immaterial whether any thing has been done in pursuance of the unlawful agreement or not.

Note:—In this case substantive charges of misappropriation and falsification of accounts was not proved but the conspiracy of those was proved. So conviction for conspiracy was upheld.

Bimbadhar Pradhan Vs State of Orissa
A I.R. 1956 S C. 469 : 1956 Cri L J. 831

(iii) Offence under section 326 of Penal Code is in its relation to the offence of murder, a minor offence and the language used in section 149 of the Indian Penal Code does not prevent the court from convicting for that minor offence merely because an aggravated offence is committed.

Shambhu Nath Vs State of Bihar
A.I R 1960 S C 725 : 1960 Cri L J 1144

(iv) In the Bombay General Clauses Act, the word offence as used in section 161 (1) of Bombay Police Act includes an offence under the Penal Code and the protection given U/s 161(1) of Bombay Police Act is not limited to the offence under the Police Act only

Virupaxappa Veerappa Kadampur Vs State of Mysore
A.I.R. 1963 S.C. 849 : 1963 (1) Cri. L J. 814

(v) Dishonest abstraction of electricity is an offence under the Indian Electricity Act (1901) and is covered by section 39 of the Act and not by 379 of the Penal Code. Penal code has no applicability. So the prosecution would be in-competent unless it was instituted at the instance of the persons named in S.50 of the Act.

Avtar Singh Vs State of Punjab
A.I.R. 1965 S.C. 666 : 1965 (1) Cri. L.J 605

(vi) Where the information discloses a cognizable as well as a non-cognizable off-

(Offence-contd)

ence, the police officer is not debarred from investigating any non-cognizable offence which may arise out of the same factor. He can include the non-cognizable offence in the charge-sheet which he presents for a cognizable offence. Police investigated an offence U/s 7 of Essential Supplies Act along wi h section 420 IPC. The trial could proceed for the said offence U/s 251 A Cr. P. C. and the investigation is valid.

Pravin Chandra Mody Vs State of Andhra Pradesh
A.I.R. 1965 S.C. 1185 : 1965 (2) Cri L J. 250

(vii) It is essential for the purpose of section 17 of the Hindu Marriage Act, that the marriage to which Section 494 IPC applies on account of the provisions of the Act, should have been celebrated with proper ceremonies and in due form. The marriage of the accused did not take place according to the Hindu law. The marriage cannot be said to have been solemnized and therefore, the appellant cannot be held to have committed the offence U/s 494 IPC.

Bhaurao Shankar Lokhande Vs The State of Maharashtra
A.I.R. 1965 S.C. 1564

(viii) The words 'any offence under the Indian Penal Code" cannot be read ejusdemgeneris with the offences such as theft, theft in building, dishonest misappropriation and cheating and other offences which are connected with property. This clause stands by itself and indicates that all offences punishable with not more than two years imprisonment are also capable of being dealt with under S 562 (A) Offences against property are all included in Ch 17 of the Indian Penal Code and if it was desired to limit the operation of S 562 (1-A) to offences against property, it would have been the easiest thing to have mentioned the seventeenth Chapter of the code So the sentence of admonition u/s 561 (1-A) can be passed even in the offence of wrongful confinement i. e. 342 I.P.C.

Akarapu Katta Mallu Vs Purna Chandra Rao etc
A.I.R. 1967 S.C. 1363 (September Part) : 1967 Cri. L.J 1212

Office

Where power is conferred on a person by name or by virture of his office, the individual designated by name or as the holder of the office for the time being is empowered specially.

Sindhi Lohana Choithram Parasram Vs The State of Gujarat
A.I.R. 1967 S.C. 1532 (October Part) · 1967 Cri. L.J. 1396

Officer

Section 117 of Factories Act is not limited to officers only but applies also to to any person.

State of Gujarat Vs Kansara Mani Lal
A.I.R. 1964 S.C 1893 ; 1964 (1) Cri. L.J. 90

Official Act

An official act can be performed in the discharge of official duty as well as in dereliction of it.

A I R. 1955 S.C. 287 · 1955 Cri. L.J.857

Official Duty

(i) The mere fact that an opportunity to commit an offence is furnished by the official duty is not such a connection of the offence with the performance of such duty as to justify even remotely the view that the acts complained of are within the scope of their official duty.

Note —In the case 1960 S.C. 745 the respondents searched the house of the appellant and in that course committed theft and misappropriated certain property In such type of offences official duty has nothing to do. So sanction U/s 197 Cr.P.C. is not required.

Dhannjay Ram Sharma Vs M.S Uppadaya
A.I.R 1960 S.C. 745 · 1960 Cri L.J. 1153

(ii) It is clearly established that whether an offence was committed in the course of official duty or not, will depend on the facts of each case.
(A.I R. 1943 F.C. 43 referred).
Further it is wrong to suggest that an offence under Section 409 of penal Code can never be committed by a public servant while acting in the discharge of his official duty.
(A I R. 1955 S.C. 309-Amrik Singh's case) relied upon.

Baij Nath Vs State of Madhya Pradesh
A.I.R. 1966 S.C. 220 : 1966 Cri. L.J. 189

Old Age

The sentence was reduced to the period already undergone in view of old age by Supreme Court.

Smt. Mathri Vs State of Punjab
A.I.R. 1964 S.C. 986 : 1964 (2) Cri. L.J. 57

Omission

The omission to frame a charge is a grave defect and should be vigilantly guarded against. In some cases, it may be so serious that by itself it would vitiate a trial and render it illegal, prejudice to the accused being taken for granted.

Willie slaney Vs State of Madhya Pradesh
A.I.R. 1956 S.C 116 : 1956 Cri.L J. 291

(ii) That the omission to mention section 34 Penal Code in the charge has only an academic significance and does not in any way mislead the accused.

Note:—Death sentence was maintained inspite of this omission in charge

Rawalpenta Venkalu Vs The State of Hyderabad
A.I.R. 1956 S.C. 171 : 1956 Cri. L J. 338

(Omission-contd)

(iii) The omission to mention section 34 of the Penal Code in the charge cannot affect the case unless prejudice is shown to have resulted in consequence thereof.

Note:—The appeal in 1958 S.C. 672 was dismissed.

B. N. Srikantiah Vs State of Mysore
A.I.R. 1958 S.C. 672 : 1958 Cri. L J. 1251

Omission in the statement of a witness

Omission unless by necessary implication be deemed to be part of the statement, cannot be used to contradict the statement made in the witness box.

Tahsildar Singh Vs State of U.P.
A.I.R 1959 S.C. 1012 : 1969 Cri. L.J 1231

(v) An omission to mention matters which are essential to the prosecution or the defence case in order to help the jury to come to a correct verdict may also in certain circumstances amount to a misdirection. But in either case, every misdirection or non-direction is not in itself sufficient to set-aside a verdict, but it must be such that it has occasioned a failure of justice.

K. M. Nanavati Vs State of Maharashtra
A.I.R. 1962 S.C. 605 : 1962 (1) Cri. L J. 521

(vi) Where the Session Judge mixed up the ingredients of the offence with those of the exception, and Sessions Judge did not place before the jury the distinction in the matter of burden of proof between the ingredients of the offence and those of the exception. The Sessions Judge did not tell the jury that where the accused relied upon the exception embodied in S 80 of the Indian Penal Code, there was a statutory presumption against him and the burden of proof was on him to rebut that presumption. It was not possible for the jury, who were laymen, to know the exact scope of the defence and also the circumstances under which the plea under S. 80 of the Indian Penal Code was made out. This Omission is fatal.

K. M. Nanavati Vs State of Maharashtra
A.I.R. 1962 S.C. 605 : 1962(1) Cri. L J. 521

(vii) The Learned Sessions Judge did not comply with the provisions of S. 271 of the Code of Criminal Procedure in as much as he did not read over and explain the charges framed by the Magistrate. This omission on his part, however, does not vitiate the trial in view of S. 537 of the Code when it is not shown that any prejudice has resulted to the appellants on account of this omission.

Banwari Vs State of Utter Pradesh
A.I.R. 1962 S.C. 1198 : 1962(1) Cri. L.J. 278

(viii) The witnesses in their statements before the police attributed a clear intention to the accused to commit murder, but before the court they stated that the

(Omission-contd)

accused was insane. **Held:**—It was necessarily implied in previous statements of the witnesses before the police that the accused was not insane at the time of murder. So the previous statement before the police could be used to contradict their version in the court.

Dahyabhai Chhaganbhai Vs State of Gujarat
A.I.R. 1964 S.C. 1563 :1964 (2) Cri. L.J. 472

(ix) Since no allegation of malice or dishonesty have been made in the petition personally against the Minister it is not possible to say that his omission to file an affidavit in reply by itself would be any ground to sustain the allegation of mala fides or non-application of mind.

P. L. Lakhanpal Vs Union of India
A I.R. 1967 S.C. 908

Omnibus Evidence

The omnibus evidence in general terms to the effect that all these persons and many more were the miscreants and were armed with deadly weapons, naturally has to be very closely scrutinised in order to eliminate all chances of false or mistaken implication.

Baladin Vs State of Utter Pradesh
A.I.R. 1956 S.C. 181 : 1956 Cri. L.J. 345

Onus

(i) Onus of proving the difference in the report of the Chemical Examiner is on the prosecution.

Tulsiram Kaur Vs The State
A.I R 1954 S.C. 1 : 1954 Cri L.J. 225

(ii) It is for the party pleading self defence to prove the circumstances giving rise to the exercise of the right of private defence.

Note:—Onus was not discharged.

Jai Dev Vs State of Punjab
A.I R. 1963 S.C. 612 : 1963(1) Cri. L J. 495

(iii) When the statute says that it will be the duty of the occupier or the manager to keep the guard in position when the machine is working and when it appears that he has not done so, it will be for him to establish that notwithstanding this he was not liable.

The State of Gujarat Vs Jethalal Ghelabhai
A I.R. 1964 S.C. 779 : 1964(I) Cri. L.J. 558

(iv) Where the occupier or manager proves that somebody else has removed the fencing without his knowledge consent or connivance, that alone would not exempt him from liability but he has further to prove that he had used due diligence to enforce the execution of the Act which can only mean, that he exercised due diligence to see that the fence which under the

(*Onus -contd*)

Act it was his duty to see was kept in position all along, had not been removed.

The State of Gujarat Vs Jethalal Ghelabhai
A I.R. 1964 S.C. 779 : 1964 (2) Cri. L.J 558

(v) In order to bring home to the accused the offence charged, the prosecution may have to show that the person to whom the list was sen was not a registered practitioner. Once that fact is established it is for the accused to establish, and to satisfy the court that his case falls under section 14(1)(c) of the Drugs and Magic Remedies Act (1954).

Dr. Yesh Pal Sahi Vs The Delhi Administration
A I.R. 1964 S.C. 784 : 1964 (2) Cri. L.J 560

(vi) The onus of proving the fact that prosecoution has been inititiated at the instance of one of persons mentioned in section 50 of Indian Electricity Act is on the prosecution.

Avtar Singh Vs State of Punjab
A.I.R. 1965 S.C. 666 : 1965 (1) Cri. L.J. 605

(vii) The mere fact that the detention order is passed during the pendency of habeas corpus proceedings cannot by itself lead to the conclusion that the order is vitiated by malice in law. It depends on the circumstances of the case. The detenu would have to prove not only that the detention order has been passed during the pendency of habeas corpus proceedings but also that there are other facts showing malice

Godavari S. Parulekar Vs The State of Maharashtra
A.I R. 1966 S.C. 1404 (Page 1407) 1966 Cri.L J. 1067

(viii) The burden of proof lying upon the accused under Section 4 (I) of the Prevention of Corruption Act will be satisfied if the accused person establishes his case by a preponderance of probability and it is not necessary that he should establish his case by the test of proof beyond a reasonable doubt. In other words, the onus on an accused person may well be compared to the onus on a party in civil proceedings, and just as in civil proceedings.

V.D. Jhingan Vs. State of U.P
A.I R. 1966 S.C. 1762 (Para 4) 1966 Cri L J 1357

(ix) S. 178 A of the Sea Custom Act provides :
that when the goods are seized in the reasonable belief that they are smuggled goods, than the burden of proving that they are not smuggled goods is on the person from whose possession the goods are seized. The onus is on him to show that the goods are not smuggled, that is, not of Foreign origin and on which no duty is paid. The onus is not on the prosecution to show that the goods are not of Indian origin.

Kewal Kishan Vs State of Punjab
A.I.R. 1967 S.C. 737 : 1967 Cri. L J. 651

Opinion

(i) Supreme Court in a Criminal appeal would not enquire into the questions of a fact but where three persons have been sentenced to death on the opinion of the third judge, the Supreme Court deemed it advisable to examine the evidence.

Pandurang Vs State of Hyderabad
A.I.R. 1955 S.C. 216 : 1955 Cri. L.J. 572

(ii) Opinion of prosecuting authority in the course of investigation attributing murder to R and not to the accused is not relevant and should not be placed on the record.

Note:—In case 1955 S.C. 419 accused was acquitted.

Suraj Pal Vs State of Utter Pradesh
A.I R. 1955 S.C. 419 : 1955 Cri. L.J. 1004

(iii) Not taking of the opinion of the assessors in respect of all the charges for which the accused was tried is certainly a grave violation of an imperative provisions of the Code.

Prem Nath Vs State of Delhi
A.I.R. 1956 S.C. 4 : 1956 Cri. L.J. 121

(iv) Where the opinions of authors were neither shown to have been given in regard to circumstances exactly similar to those in the particular case before court nor were they put to medical witness, the disposing of the doctor's evidence by saying that the doctor was comparatively young and his statement was not inaccord with the opinion expressed in Medical jurisprudence is not satisfactory way. The passages which are sought to discredit his opinion must be put to him.

Bhagwan Dass Vs State of Rajasthan
A.I.R. 1957 S.C. 589 : 1957 Cri. L.J. 889

(v) Whether the court feels satisfied with one affidavit or with another is a matter mainly of its opinion and conviction.

Mohd. Ikram Hussain Vs The State of Uttar Pradesh
A.I.R. 1964 S.C. 1625 : 1964(2) Cri. L.J. 590

Opium Act

(i) When two separate offences of possession and transporting has been committed, the sum total of these sentences should not exceed one year's imprisonment (one year being the maximum sentence of one offence).

Note:—Person possessing and transporting opium commits two separate offences under the Opium Act.

Puranmal Agarwalla Vs State of Orissa
A.I R. 1958 S.C. 935 : 1958 Cri. L.J. 1432

(Opium Act-contd)

(ii) The use of the word "shall" does not always mean that the enactment is obligatory or mandatory. S. 11 of Opium Act (as applicable to Madhya Pradesh) is not obligatory but it is for the court to consider in each case whether the vehicle in which the contraband opium is found or is being transported should be confiscated or not, having regard to all the circumstances of the case.

Note:—Third party *i e.* M/s Azad Bharat Co. who is the owner of truck got the possession of truck and the same was not confiscated.

State of Madhya Pradesh Vs M/s Azad Bharat Finance Co. & another
A.I.R. 1967 S.C. 276 : 1967 Cri L.J. 285

Opportunity

(i) The accused is entitled to rebut the charge, if a certain document would furnish good material for rebutting that case, the court by declining to issue process for the examination of the witnesses connected with those documents, would deprive the accused of an opportunity of rebutting. The accused cannot be convicted without an opportunity being given to the accused to present his evidence, and if it is denied, that is no fair trial and conviction cannot stand.

Ronald wood Mathams Vs State of West Bengal
A.I.R. 1954 S.C. 455 : 1954 Cri.L.J. 1161

(ii) Where the statement of the Prosecution witness, examined earlier, to another prosecution witness, who is examined later, is sought to be made use of by the prosecution, without the earlier prosecution witness having been asked about it in his examination, the earlier prosecution witness to whom the statement is ascribed must be given an opportunity to explain it. The witness should at least be recalled for the purpose. In the absence of such opportunity the statement of the earlier prosecution witness is inadmissible in evidence.

Awadh Behari Vs State of Madhya Pradesh
A.I.R. 1956 S.C. 738 : 1956 Cri. L.J. 1372

(iii) The proviso to section 421(1) Cr.P.C. in so far as it denies an opportunity to be heard to a convitced person in Jail who files appeal through jail authorities is not the contravention of Art-14 of the Constitution.

Surajpal Singh Vs State of Utter Pradesh
A.I R 1961 S.C. 583 : 1961 (1) Cri.L.J. 730

(iv) It cannot be said to be in the interest of justice that after a decision has been given against the complainant upon the full consideration of his case, he or any other person should be given another opportunity to have his complaint enquired into.

Note :—Fresh complaint after the dismissal of the first complaint is a gross abuse of the process of the court and was not with the object of furthering the interest of justice.

Pram Nath Jalukdar Vs Ranjan Sarkar
A.I.R. 1962 S.C. 876

(*Opportunity-contd*)

(v) The fact that the accused had the opportunity to secret the articles is not sufficient to infer exclusive possession of the accused of these articles which were lying in Almirah of the house, jointly possessed by father and the accused,

Radha Kishan Vs State of Uttar Pradesh
A.I.R. 1963 S.C. 822 : 1963 (1) Cri L.J.809

(vi) Court cannot admit a document without giving opportunity to the accused to rebut the same or to file objection as the principles of natural justice require that no court shall give a finding whether on facts or law without giving an opportunity to all the contesting parties.

M. Narayanan Nambiar Vs State of Kerala
A.I.R. 1963 S C. 1116 : 1963 (2) Cri. L.J. 186

Oral Evidence

(i) In the circumstances of particular case it would be proper for an appellate court not to rely upon the oral evidence of eye-witnesses implicating particular accused unless there is some circumstantial evidence to support it. The corroboration to satisfy the judges is not that kind of corroboration which one require in the case of the evidence of an approver or an accomplice, but corroboration by some circumstance which would lend assurance to the evidence before them and satisfy them that the particular accused persons were really concerned in the murder of the deceased.

Note :—Oral Evidence was relied upon. Conviction was up held.

Amjad Khan Vs The State
A.I.R. 1952 S.C. 167 : 1952 Cri. L J. 863

(ii) It is a serious thing to rest the conviction wholly upon the oral testimony in the case which has remained unchecked and unconfirmed by expert evidence.

Note :—Appeal was allowed.

Mohinder Singh Vs The State
A.I.R. 1953 S.C. 415 : 1953 Cri. L.J. 1761

(iii) Once the investigation had started any non-confessional statement made by the accused also required to be recorded in the manner indicated in section 164 CrPc and if no such record had been made by the Magistrate, **the Magistrate would not be competent to give oral evidence of such statement having been made by the accused.**

Rao Shiv Bahadur Singh Vs State of Vindh P.
A.I.R. 1954 S.C. 322 : 1954 Cri. L J. 910

(*Oral Evidence-contd*)

(iv) The lower court had dealt with the matter fully. High Court in revision cannot go into the oral evidence. Rejecting revision without giving reasons in the finding cannot be said to be erroneous.

Narayan Tewary Vs State of West Bengal
A.I R. 1954 S.C. 726 : 1954 Cri. L.J 1808

(v) Collision between two trains at Station-Prosecution of station master for negligence, the correct approach in a matter of this kind should be to determine the crucial issue not on mere balance of oral evidence bnt on broader consideration and clear probabilities. In matter of this kind the oral evidence is likely to be honestly discrepant and the question is not one of weighing the reliability of evidence.

Awadh Behari Vs State of Madhya Pradesh
A.I.R. 1956 S.C. 738 : 1956 Cri: L J. 1372

(vi) Section 356 (24) Criminal Procedure Code relates only to the oral evidence adduced in the case and not to documentary evidence.

The State of Andhra Pradesh Vs Cheemalapati-Ganeswara Rao
A.I.R. 1963 S.C. 1850 .1963 (2) Cri. L J. 1671

(vii) A confession recorded by second class magistrate not specially empowered by the State Government to record statement or confession under S. 164 of Criminal Procedure Code cannot be proved by magistrate's oral testimony. The applicability of S. 533 does not help and will not make that statement admissible. As a magistrate of a higher class is prevented from giving oral evidence of a confession made to him because thereby the safeguards ereated for the benefit of an accused person by S. 164 would be rendered nugatory, it would be an unnatural construction of the section to hold that these safeguards were not thought necessary and could be ignored, where the confession had been made to a magistrate of a lower class and that such a magistrate was therefore, free to give oral evidence of the confession made to him.

State of Utter Predesh Vs Singer Singh and others
A.I.R. 1964 S C. 358 : 1964 (1) Cri. L.J. 263 (2)

Oral Statement

(viii) The proviso to section 162 (1) Cr P.C. which lifts the ban put by section 162 (1) Cr. P. C. cannot apply to an oral statement made by a witness to the police officer.

K.M. Nanavati Vs State af Maharshtra
A.I.R. 1962 S C. 605 : 1962 (1) Cri. L.J. 521

Orders

(i) If the High Court is not aware of the filing of an appeal, it is open to it (High Court) to call for the record of the proceeding before the magistrate in order to satisfy itself whether the sentence passed is a proper one or not. When however, if it is brought to the notice of High Court that an appeal is pending before the Sessions Judge, High Court can withdraw the appeal to the High Court so that the appeal and rule be heard together.

Romesh Chandra Arora Vs The State
A.I.R. 1960 S.C. 154 : 1960 Cri. L.J. 177

(ii) The order for instituting a case to the police by Magistrate after taking cognizance on a complaint, would clearly be under section 202 of the Code of Criminal Procedure. Magistrate's asking the police to institute the case is an irregularity and there is no reason to think that irregularity had resulted in the failure of justice.

Jamuna Singh Vs Bhadai Singh
A I.R. 1964 S.C. 1541 : 1964 (2) Cri. L.J. 468

(iii) An order which does not of its own force bind or affect the rights of the parties is not final. So appeal to the Supreme Court under Article 134 (1) of the Constitution does not lie. An order enabling the accused to have a document duly proved and exhibited in the case, being the interlocutory order is not appealable.

The State of U.P. Vs Col Sujan Singh
A.I.R. 1964 S.C. 1897 . 1964 (1) Cri. L.J 94 (Jan. Part)

(iv) The order directing detention of a citizen under R-30 (1) (b) and the decision reached by appropriate authority under R 30 A (8) should be reduced to writing.

Biren Dutta Vs Chief Commissioner of Tripura
A.I.R. 1965 S.C. 596 : 1965 (1) Cri. L.J. 501

Order of arrest

In the prevention of corruption Act U/s 3 and 6 the order of arrest from the Magistrate be obtained, during the time the police is investigating the case and not when they have completed their investigation and are initiating the proceedings against the suspected person U/s 190 Cr. P C.

R.R. Chari Vs The State of Uttar Pradesh
A.I.R. 1951 S.C. 207 (body) 1951 Cri. L.J. 775

Order of acquittal

High Court in revision can set aside the order of acquittal at the instance of private parties, though the State may not have thought fit to appeal but this jurisdiction should be exercised by the High Court only in exceptional cases when there is some glaring defect in the procedure or error in law and consequently there has been a flagrant miscarriage of justice.

K. Chinnaswamy Reddy Vs The State of Andhra Pradesh
A.I.R. 1962 S.C. 1788

Ordinary course of nature

It is true that the doctor has not said that any one of the injuries was sufficient to cause death in the ordinary course of nature. Judges looked into the nature of the injuries found on the body of Ram Prasad and infered from them that the assailants intended to cause Ram Prasad's death. It is significant that Ram Prasad died within a very short time of the assault on him. Furthermore, even if none of the injuries by themselves was sufficient in the ordinary course of nature to cause death, cumulatively they were certainly sufficient in the ordinary course of nature to cause his death, which in fact took place soon after the assault.

Brij Bhukhan Vs The State of Uttar Pradesh
A.I.R. 1957 S.C. 474 : 1957 Cri. L.J. 591

Outraging modesty

(i) The story of a person trying to outrage the modesty of two women in the presence of two gentlemen is so unnatural, that there must be clear and unimpeachable evidence before it can be accepted.

Ram Das Vs State of West Bengal
A.I.R. 1954 S.C. 711 : 1954 Cri. L J. 1793

(ii) **Facts** :—Accused caused injury to the Private parts of a female child of seven and half months.

Held by Majority :—That the offence U/s 354 of Penal Code does not depend on the reaction of the woman subjected to the assault on use of criminal force. The words used in the section are that the act has to be done 'intending to outrage or knowing it to be likely that he will thereby outrage her modesty. This intention or the knowledge is the ingredient of the offence and not the women's feeling.

Note :—The accused was awarded R.I. for two years and a fine of Rs. 1000/-

State of Punjab Vs Major Singh
A I.R. 1967 S.C. 63 (January Part) : 1967 Cri. L.J 1

Otherwise

The juxta position of the word 'otherwise' with the words (corrupt or illegal means) and the dishonestly implicit in the word 'abuse' indicate the necessity for a dishonest intention on the part of a public servant to bring him within section 5 (1) d of the Prevention of Corruption Act.

M. Narayan Nambian Vs State of Kerala
A.I.R. 1963 S.C. 1116 : 1963 (2) Cri.L.J. 186

Over Riding effect

The sections preceding section 239 of Cr.P.C. have no overiding effect on that section, the courts are not to ignore them but apply such of them as can be applied without deteracting from the provisions of section 239 Cr.P.C.

State of Andhra Pradesh Vs Chemalapati Geneswar Rao and another
A.I.R. 1963 S C. 1850 : 1963 (2) Cri L.J. 671

Overtact

The Court having the jurisdiction of trying the offence of conspiracy has also jurisdiction to try an offence canstituted by the overtact which are cammitted, in persuance of the conspiracy, beyond its jurisdiction.

Owner

(i) A declared keeper of the press is not necessarily the owner there of so as to be able to confer title to the press upon another. Ownership of the press is a matter of the general law and must follow that law.

Suvari Sanyasi Apparao Vs Boddehalli Lakshminarayana
A.I.R. 1962 S.C. 586 : 1962 (1) Cri L J. 518

(ii) Where the vehicle in which the contraband article is found, may not be confiscated when the vehicle belongs to third Party.

State of Madhya Vs M/s Azad Bharat Finance Co. and another
A.I.R. 1967 S.C. 276 : 1967 Cri.L.J. 285

"P"

Panch Witnesses

It cannot be said that the statements, if any, involved in the process of identification were statements made by the identifiers to the Punch witnesses and not to the police officers as otherwise it will be easy for the Police Officer to circumvent the provisions of section 162 Cr. P.C. by formally asking the Panch Witnesses to be present and contending that the statements, were made to the Panches and not the Police Officers.

Ram Krishan Mithan lal Vs State of Bombay
A.I.R. 1955 S.C. 104 : 1955 Cri. L.J. 196

Pardon

The moment the pardon is tendered to the accused by the District Magistrate he must be presumed to have been impliedly discharged where-upon he ceases to be an accused and becomes a witness. By section 338, Criminal Procedure Code, Power is no doubt given after the commitment to the court to which the commitment is made to tender pardon, before judgement is passed, to any person supposed to have been directly or indirectly concerned with any offence or order the Committing Magistrate or the District Magistrate to tender pardon during the trial of the case but it does not take away the power conferred under the proviso to section 337(1) of the Criminal Procedure Code. The proviso contains an additional provision which empowers the District Magistrate to tender pardon where the offences are under inquiry or trial.

Note:—In this case pardon was tendered to the approver when the other accused had already been committed to the Court of Sessions.

There was also no formal order of the discharge before the recording of the statement of approver.

Held:—The statement made by the approver in the court of Session during trial wasa statement of a witness and not of an accused.

A. J. Peiris Vs State of Madras
1954 S C 616 : 1954 Cri. L. J. 1638

(*Pardon-contd*)

(ii) The District Magistrate is empowered to tender pardon even after commitment. (Committed to the court of Sessions by the Enquiry Magistrate).

Rizak Ram Vs Delhi Administration.
A.I.R. 1958 S.C. 350 : 1958 Cri.L.J. 698

(iii) A mere tender of pardon does not attract the provisions of Section 339. There must be an acceptance of it and the person who has accepted the pardon must be examined as a witness. It is only there after that the provisions of S. 339 come into play and the person who accepted the pardon may be tried for the offence in respect of which the pardon was tendered, if the public prosecutor certifies that in his opinion he has, either wilfully concealed anything essential or had given false evidence and had not complied with the condition on which the tender was made.

Note:—In case A.I.R. 1959 S.C.13, acceptance of Pardon by accused was not proved on the File. As there was not effective pardon U/s 337 Cr. P C. so no question arises about the applicability of S. 339 Cr. P. C. The appellant was rightly tried along with other accused. Death sentence was maintained.

Bipin Behari Sarkar Vs The State of West Bengnl
A.I.R. 1959 S.C. 13 : 1959 Cri.L J. 102

(iv) A pardon Under S. 337(i) of the Code of Criminal Procedure cannot be granted in the case of an offence Under section 5 of the Official Secrets Act read with S. 120-B of the Indian Penal Code.

The State Vs Hiralal Girdharilal Kothari.
A.I R. 1960 S.C. 360 : 1960 Cri. L J. 524

(v) The validity of a pardon is to be determined with reference to the offence alleged against the approver alone and not with reference to the offence or offences of which his associates were ultimately convicted.

The State of Andhra Pradesh Vs Cheemalati Ganeswara Rao
A.I.R. 1963 S.C. 1850 : 1960 Cri. L.J. 671

(vi) Pardon can be tendered in respect of offence U/s 120 B IPC because the punishment for it is the same as that for the offence U/s 409 IPC.

1963 S. C. 1850 : 1963 (2)Cri. L J. 671

Past Conduct

(i) The past conduct or antecedent history of a person can be taken into account when making a detention order, and, as a matter of fact, it is largely from prior events showing the tendencies or inclinations of the man that an infere-

Past Conduct-contd)

nce can be drawn whether he is likely even in the future to act in a manner prejudicial to the maintenance of public order. If the authority satisfied himself that the original ground was still available and that there was need for detention on its basis, no malafides can be attributed to the authority from this fact alone.

Ujagar Singh Vs State of Punjab
A.I R. 1952 S.C. 350 : 1952 Cri. L J. 146

(ii) The past conduct or antecedent history of the person on which the authority purports to act, should ordinarily be proximate in point of time and should have rational connection with the conclusion that the detention of the person is necessary.

Note:—Ten years previous conduct was not taken into consideration.

Rameshwar Shaw Vs District Magistrate Burdwan.
A.I.R. 1964 S.C. 334 . 1964 (1) Cri. L.J. 257

Participation

Actual presence plus prior abetment can mean nothing else but participation. That is the irrebutable presumption raised by Section 114 of Evidence Act and brings the case U/s 34 of I.P C.

Note :—Death Sentence on this basic was confirmed.

Mathurala Adi Reddy Vs The State of Hyderabad
A.I.R. 1956 S C. 177 : 1956 Cri. L J. 341

Particulars

Section 222 of the Code requires that the particulars as to the time and place of the alleged offence, and the person (if any) against whom, or the thing (if any) in respect of which, the offence was committed, shall be stated. It is noteworthy that this section which requires that the particulars of the offence to be stated does not in terms further require that in an offence like conspiracy the name of the co-conspirators should also be mentioned. But it is always advisable to give those particulars also in order to give a reasonable notice to the accused that he has been charged with having conspired with so and so (persons named), as also persons unnamed, to commit a certain offence.

Bunbadhar Pradhan Vs State of Orissa
A.I.R. 1956 S.C 469 : 1956 Cri L J. 831

Note.—Please see 'ground' (iv) and (v) at page 217, and 'Detenu' (ii), (iii), (iv), (v) at page 147, 148 and 'Detaining Authority' (iv) at page 149.

Partisan Witnesses-Mother

(i) Whether the mother can be regarded as an "independent' witness. It may

(Partisan Witnesses-contd)

be that all mothers may not be sufficiently independent to fulfil the requirements of the corroboration rule but there is no legal bar to exclude them from its operation merely on the ground of their relationship. Independent merely means independent of source which are likely to be tainted. In the absence of enmity against the accused there is no reason why she should implicate him falsely.

Note :—Evidenee was relied upon and conv iction was up held.

Rameshwar Vs The State of Rajasthan
A.I.R. 1952 S.C. 54 : 1952 Cri. L.J. 547

(ii) Witnesses were not a willing party to the giving of the bribe to the Appellant No. 1 and were only actuated with motive of trapping the Appellant No. 1. Their evidence therefore could not be treated as the evidence of accomplices. Their evidence was nevertheless the evidence of partisan witnesses who were out to entrape the Appellant No.1. A perusal of the evidence of Nagindas and Sir Chinubhai leaves in the mind the impression that they were not witnesses whose evidence could be taken at its face value. So the evidence of these two witnesses was not satisfactory and could not be relied upon for implicating the Appellants without independent-corroboration.

Note :—Corroboration was not found and Conzictiin was upheld.

Rao Shiv Bahadur Singh Vs State of Vindh-P,
A.I.R. 1954 S C. 322 : 1954 Cri. L J. 910

(iii) Certain witnesses came on the scene after the whole affair was practically over and the stage had been reached when it was necessary to compare the numbers of the notes which had been recovered from the bedroom of the Appellant No. 1 with the numbers of the notes which had been handed over to Nagindas when the raid was being organised. It was at that stage that they figured in the transaction. Their evidence certainly could not be impeached as that of partisan witnesses.

Rao Shiv Bahadur Singh Vs State of Vindh-P.
A.I.R. 1954 S.C. 322 : 1954 Cri L.J. 910

(iv) Magistrate is functioning judicial matter. So he should not be relegated to the position of partisan witness. If a Magistrate puts himself in the position of a partisan or interested witness, he cannot claim any higher status and must be treated as any other interested witness.

Note :—Such type of evidence needs independent corroboration.

The State of Bihar Vs Basawan Singh
A.I.R. 1958 S.C. 500 : 1958 Cri L.J. 976

(v) It would be unreasonable to contend that evidence given by the witnesses

(Partisan Witnesses-contd)

should be discarded only on the ground that it is evidence of partisan or interested witnesses but the judicial approach has to be cautious in dealing with such evidence.

Note :—Witnesses belonging to the faction of victims were believed.

Masalti Vs The State of Utter Pradesh
A.I R. 1965 S.C. 202 : 1965 (1) Cri. L.J. 226

(vi) It is difficult to accept the plea that if a witness is shown to be relative of the deceased and it is also proved that he shared the,hostility of the victim towards the assailant's, his evidence can never be accepted unless it is corroborated on material particulars.

Darya Singh Vs State of Panjab
A.I.R. 1965 S.C. 328 :1965 Cri. L J. 350

(vii) **Note** :—See independent witness at Page 229 and further see under heads 'Relation,' and 'Witnesse's.

Partner

According to the prosecution the appellants are partners. Though it is true that the partnership deed has not been placed before the court but there is other material which would justify the conclusion that they are partners. The fact that the sale deed stands in the names of both these persons shows prima facie that both of them have interest in the mill. Then there is a statement of Ramaswami to the effect that they were partners. Then there is evidenece to the effect that both of them were taking part in the running of the mill. In these circumstances both can be held to be the Co-owners of the mill. So the appellants being consumers are liable to be covicted U/s 44 (c) and R. 138 of the Electricity Act.

Ram Chandra Prasad Vs State of Bihar
A.I.R. 1967 S.C. 349 : 1967 Cri. L.J. 406

Partnership

A partner has undefined ownership alongwith the other partners over all the assets of the partnership. Every partner has dominion over the partnership property by reasons of the fact that he is a partner. This is a kind of dominion which every owner of property has over his property. But it is not dominion of this kind which satisfies the requirements of Section 405 IPC. Even if he chooses to use any of them for his own purpose he may be accountably civilly to the other partners but does not thereby commit an offence of misappropriation.

Velji Raghavji Patel Vs The State of Maharashtra
A.I.R. 1965 S.C. 1433 : 1965(2) Cri. L. J. 431

Pecuniary resources

Pecuniary resources and property required before the enforcement of the prevention of Corruption Act can be taken into consideration U/s 5,3) of the Act.

Sujjan Singh Vs State of Punjab
A.I R. 1964 S.C. 464 : 1964 (1) Cri. L.J. 310

Penalty-Factory Act

The prohibition contained in the opening words of clause '*b*' of section 52 of Factories Act is general and is not confined to the manager. By breach of Section 52, 92 of Factories Act manager and as well as occupier will be liable to penalities.

John Douglas Keith Brown Vs the State of West Bengal
A.I.R. 1965 S C. 1341 : 1965 (2) Cri. L.J. 423

Pending

(i) A legal proceedings is deemed to be 'pending' as soon as commenced and until it is concluded *i.e* so long as the court having original cognizance of it can make an order on the matter in issue or to be dealt with therein A cause is said to be pending in a court of justice when any proceedings can be taken in it.

Asgarali Nazarali Singaporewalla Vs State of Bombay
A.I.R. 1957 S.C. 503 : 1957 Cri L.J. 510

(ii) S. 10 of the Criminal Law Amendment Act refers to cases pending before any magistrate, it obviously refers to cases pending before magistrates who can deal with them on the merits in accordance with law and this requirement is plainly not satisfied in regard to any case in which a commitment order had been passed by the committing Magistrate. After the order of commitment is passed, the case cannot be said to be pending before the committing magistrate within the meaning of S.10

R. R. Chari Vs State of Uttar Pradesh
A.I R. 1962 S.C. 1573 : 1962,(2) Cri. L J. 605

Period

The fact that emergency may last for a long period and as a consequence citizens may be precluded during the period of order has no bearing.

Makhan Singh Vs The State of Punjab
A.I.R. 1964 S.C. 381 : 1964 (1) Cri. L.J. 269

Perjury

If at the time when the judgment was delivered, the Magistrate had no material before him to form an opinion that the petitioner had given false evidence then Section 479-A of the Criminal Procedure Code will not be appli-

(Period-contd)

cable. It is clear that the bar U/s 479-A (6) of the Code refers not to the legal character of the offence per se but to the possibility of action U/s 479-A upon the facts and circumstances of the particular case. If for instance material is made available to the court after the judgment had been pronounced, rendering it clearly beyond doubt that a person had committed prejury during the trial and material was simply unavailable to the court before or at the time of judgment.

Kupha Gundan Vs M. S. P. Rajesh
A.I.R. 1966 S.C 1863 : 1966 Cri. L J. 1503

(ii) Procedure U/s 479-A Cr. P.C. and 476 Cr. P.C.
The appellants were witnesses in the inquiry in the High Court and they had fabricated false evidence. If any prosecution was to be started against them the High Court ought to have followed the procedure under Section 479-A of the Code of Criminal-Procedure. Not having done so, the action under Section 476 of the Code of Criminal Procedure was not open because of sub-s.(6) of Section 479-A and the order under appeal cannot be allowed to stand.

Baban Singh Vs Jagdish Singh
A.I.R. 1967 Cri. L.J. 6

(iii) **See Further:**—'Fabrication' at Page 195 'False evidence,' False report at Page 198-199 'Forgery' and complaint (iii, at page 40, vii, xi at pages 89 and 90)

Permission

Where the Police Officer starts investigation before obtaining permission of the magistrate under section 5 of Prevention of Corruption Act, he contravenes its provisions.

Note :—The appeal of the state against acquittal based on this ground was dismissed.

The State of Madhya Pradesh Vs Mubarak ali
A.I.R. 1959 S.C 707 : 1959 Cri. L.J. 920

(ii) Where it appears that the Magistrate while granting the permission under section 5-A of the Prevention of Corruption Act did not realise the significance of his order giving permission, but only mechanically issued the order on the basis of the application which did not disclose any reasons presumably because he thought that what was required was only a formal compliance with the provisions of the Section. So Provisions of section 5-A of the Prevention of Corruption Act are not complied with.

Note:—Judgment of acquittal was upheld.

The State of Madhya Pradesh Vs Mubarakali
A I.R. 1959 S.C. 707 : 1959 Cri. L.J. 920

Person

(i) The use of the pharase "every person in section 2 as contrasted with the use of the Pharase "every person" in section 3 as well as section 4(2) of the Penal Code is indicative of the idea that to the extent that the guilt for an offence committed within India can be attributed to the person, every such person without exception is liable for punishment under the code. The plain meaning of the phrase "every person" is that it comprehends all persons without limitation and irresppective of nationality, allegiance, rank, status, caste, colour or creed.

Note:—In this case the accused was Pakistani national at the time of commission of offence and was held guilty not withstanding his not being corporeally present in India.

Mobarik Ali Ahmed Vs The State of Bombay
A.I.R. 1957 S C. 857 : 1957 Cri. L.J 1346

(ii) The language of explanation 2 of Section 499 I.P.C. is general and any collection of persons would be covered by it. Of course, that collection of persons must be identifiable in the sense that one could, with certainity say that this group of particular people has been defamed as distinguished from the rest of the community. The prosecuting staff of Aligarh or as a matter of fact of the Prosecuting staff in the State of Uttar Pradesh is certainly such an identifiable group or collection of persons. There is nothing indefinite about it. So Prosecuting staff of U.P. Government at Aligarh can be subject of defamation and is covered by explanation.

Sahib Singh Mehra Vs Uttar Pradesh
1965 S C. 1451 :1965 (2) Cri. L.J. 434

(iii) The magistrate acting under Section 259 of the Cantonment Act of 1924, acts as a persona designate and therefore, his order under that Section is not revisable under Sections 435/439 of the code of Criminal Procedure. So Seasions Judge and the High Court have no jurisdiction under these provisions to interfere.

The Cantonment Board Vs Pyare Lal
A I R. 1966 S C. 108 : 1966 Cri L.J. 93

(iv) Reference u/s 146 Cr P.C. to the Civil Court is not to refer the matter to the Presiding Judge of a particular Civil Court but to a court. Thus where a special or local statute refers to a constitutional court as a 'court' and does not refer to certain Presiding Officer of the Court, the reference cannot be said to be to Persona designate.

Ram chandra Vs The State of Uttar Pradesh
A.I.R. 1966 S.C 888 1966 Cri L. J. 1514

Physical

Control over the goods has always been regarded as one of the tests of physical or 'defacto' possession.

Note :—In this case recovery of the property in question was from the appellant's Mill but the possession was declared to be that of one Das as property had already been sold to him and the physical possession delivered The property was held to be that of D

Seksaria Cotton Mills Ltd. Vs The State of Bombay
A.I.R 1953 S C. 278 1953 Cri. L. 1116

(ii) For the purpose of cmmon intention the participation in the commission of the offence need not in all the cases be by physical presence

Jaikrishna das Manohardas Vs State of Bombay
A.I.R. 1960 S.C 889 : 1960 Cri. L.J. 1250

Photograph

(i) That the skull would be admissible in evidence for establishing the identity of the deceased, and similarly a photograph of that skull. A superimposed photograph is not any trick photograph seeking to make something appear different from what it is in reality There is no distortion of truth involved in it or attempted by it A superimosed photograph is really two photographs merged into one rather one photograph seen beneath the other. Both the photographs are of existing things and they are superimposed or brought into the same plane enlarged to the same size for the purpose of comparison. That a superimposed photograph of the deceased over the skelton of a human body (skull) is admissible under section 9 of the Evidence Act to prove the fact that skelton was that oi the deceased.

Ram Lochan Ahir Vs The State of West Bengal
A.I.R. 1963 S.C. 1074 : 1963 (2) Cri. L.J. 1870

(ii) Evidence of photographs to prove writing or hand writing can only by received in evidence if the original can not be obtained and the photographic re-production is faithful and not faked or false.

Note :—It was received to prove the conspiracy of international smuggling racket where the offenders were tried in two different countris The original letters were suppressed by the accused.

Criminal Appeal No 52-52 of 1964 Decided on 14.12.67

Place of trial

That the appellant was a P[illegible] National at the time of the commission of the offence, he must be [illegible] and punished under the Penal Code not withstanding his not b[illegible] present in India at the time of commission of offence because [illegible]ding of section 2 of the Penal the Code does apply [illegible]o has committed an off[illegible]

(*Place of trial-contd*)

India notwithstanding that he was corporeally present outside.

Note :—The complainant was a buisnesman in Goa and entered into a contract with the appellant, who was at karachi for the supply of rice to the Complainant. Payment was to be made in sterling in Karachi but subsequently agreed to make payment in Indian currency and in Bombay. The appellant though at Karachi was making representation to the complainant through Bombay. So the offence of cheating U/s 420 and 415 have occured at Bombay. So Bombay Court has jurisdiction to try the accused.

Note :—Please See Further Jurisdiction at Page 268 and 269

Mobarik Ali Ahmed Vs The State of Bombay
A.I.R. 1957 S.C. 857 : 1957 Cri. L.J. 1346

Plea

(i) The plea of alibi involves a question of facts and when both courts below concurrently found that fact against the appellant, the Supreme Court, cannot, on an appeal by special leave, go behind that concurrent finding of fact.

Thakur Prasud Vs The State of Madhya Pradesh
A.I.R. 1954 S.C. 30 : 1954 Cri. L J. 261

(ii) New plea as to invalidity of sanction cannot be allowed to be raised for the first time before the Supreme Court.

R.R. Chari Vs State of Uttar Pradesh
A·I.R. 1962 S.C. 1573 : 1962 (2) Cri. L J. 510

(iii) Plea that there was no proof that Government had sanctioned lodging of complaint U/s 198 Cr. P.C This point was not raised in courts below and was also not taken in petition for special leave. Plea not allowed to be raised during arguments.

Sahib Singh Mehra Vs State of Uttar Pradesh
A.I.R. 1965 S.C. 1451 : 1965 (2) Cri. L.J. 434

Plea of Guild

The requirements of S. 243 of the Criminal Procedure Code are mandatory in character and a violation of these provisions vitiates the trial and renders the conviction legally invalid. The requirement of the section is not a mere empty formality but is a matter of substance intended to secure proper administration, of justice. It is important that the terms of the section are strictly complied with because the right of appeal of the accused depends upon the circumstance whether he pleaded guilty or not and it is for this reason that the legislature requires that the exact words used by the accused in his plea of

(*Plea of Gulid-contd*)

guilty should, as nearly as possible, be recorded in his own languge in order to prevent any mistake or misapprehension.

Note :—Appeal of the accused was allowed.

S. 362 (2A) of the criminal procedure code has no application in a case where the accused pleads guilty and the special provision of S. 243 of the Criminal Provision of S. 243 of the Criminal Procedure Code would be attracted in such case. Section 243 of the Criminal Procedure Code is a provision of a special character and according to well established rule of interpretation that special provision will take a precedence and override the general provision of S. 362 (2A) of the Criminal Procedure Code.

Mahant Kaushalya Das Vs State of Madras
A.I.R. 1966 S.C. 22 · 1966 Cri. L J. 22

Poisoning

(i) Where the evidence in the case shows that the accused gave the deceased three 'peras' and within half an hour the deceased died and the food apart from peras did not contain poison, proved the guilt of the accused

Mohan Vs State of Uttar Pradesh
A.I.R. 1960 S.C. 659 : 1960 Cri. L.J. 1011

(ii) The prosecution must prove beyond motive that the deceased died of a perticular poison, the accused was in the possession of the same and that he had opportunity to administer the same to the deceased.

Note :—Conviction was upheld.

Mohan Vs State of Uttar Pradesh
A.I.R. 1960 S.C. 659 : 1960 Cri. L.J. 582

(iii) Murder by poisoning. Facts to be established.

Anant Chintaman Lagu Vs The State of Bombay
A.I.R. 1960 S.C. 500 : 1960 Cri. L.J. 1011

(iv) If the circumstantial evidence, in the absence of direct proof of three elements required in poisoning case, is so decisive that the court can unhesitatingly, hold that the death was the result of the administration of poison (though not detected) and the same must have been administered by the accused, then the conviction can be rested on it. A case of murder by administration of poison is almost always one of secrecy. The poisoner seldom takes another into his confidence, and his preparations for the commission of the offence are also secret. He watches his opportunity and administers the poison in a manner calculated to avoid its detection. Of course, there is a chemical test for almost every poison, but it is impossible to expect a search for every poison. Even in chemical analysis, the chemical analyser may be unsuccessful for

(*Poisoning-contd*)

various reasons Tavlor in his 6 Principles and Practice of Medical Jurisprudence' (Vol. II P.228 gives three possible explanations for negative findings, viz (1) the case may have been of disease only : (2) the poison may have been eliminiated by vomiting or other means of neutralised or metabolised : and (3) the analysis may have been faulty performed. Syensson Wendel in 'Crime Detection' has stated at P. 281 that :

"Hypnotics are decomposed and disappear very quikly--some even in the time which elapses between the administration and the occurrence of death."

Note —(i) Doctor's Evidence about the discovery of poison was missing. Conviction was upheld on the basis of the **circumstancial evidence and the conduct** of the accused

Note —(ii) Corpus delict i.e dead body was kept for ten days and then post mortum examination was made, because an observant peon noticed some mark on the neck which he thought was suspicious and the mischief was traced.

Anant Chinaman Lagu Vs The State of Bombay
A.I.R. 1960 S.C. 500 : 1960 Cri. L.J. 582

(v) Stramonium and a dhatura leaf are poisonous. The appellant was registered as Homoeopath, and in Homoeppathy a dhatura leaf is never administered as such. In no system of medicine, except perhaps in the Ayurvedic System, the dhatura leaf is given as cure for guinea worms It seems that the appellant prescribed the medicine without thoroughly studying what would be the effect of giving 24 drops of stramonium and a leaf of dhatura. It is a rash and negligent act to prescribe poisonous medicines without studying their probable effect

Note :—Conviction U/s 302 was converted into U/s 304-A IPC and the appellant was sentenced to 2 years R I.

Juggan Khan Vs The State of Madhya Pradesh
A.I R. 1965 S.C. 831 : 1965 Cri. L.J. 763

Police

The presumption that a person acts honestly applies as much in favour of a Police Officer as in other persons and it is not a judicial approach to distrust and suspect him without good grounds thereof. Such an attitude could do neither credit to the magistracy nor to the public It can only run down the prestige of the public administration:

(per Mr. Justice Venkata Rama Ayyar).

Note :—The appeal in accordance with the judgment of the majority was allowed and the conviction was set-aside.

Ahei Raja Khima Vs State of Saurashtra
A I.R 1956 S.C. 217 : 1956 Cri. L.J 426

Police Act

The section 57 of the Bombay Police Act only enables the authorities to take note of their convictions and to put them outside the area of their activities so that the public may be protected against the repetition of such activities

The State of Bombay Vs Vishnu Ramchandra
A.I R. 1961 S.C. 307 : 1961 (1) Cri. L J. 450

(ii) Under Art. 313 of the Constitution, the Police Act and police regulations made in exercise of the powers conferred on government under that Act, which were preserved U/s 243 of the Government of India Act, 1935, continue to be enforced even after the Constitution so far as they are consistent with the constitution.

State of Uttar Pradesh Vs Babu Ram
A.I.R. 1961 S.C 751 . 1961 (I) Cri. L J. 773

(iii) A judge cannot make the sweeping and general observation and remarks against the entire body of Police when the case before him is of an individual

The State of Uttar Pradesh Vs J Mohammad Naim
A.I.R. 1964 S C 703 · 1964 Cri L.J. 549

Police

If the State has evolved the tree three system of giving promotion from constables to head-constables, from the head-constables to sub Inspectors and from Sub Inspectors to Inspectors, which is done in the interest of administrative efficiency of the police force, it cannot be said that such a system should be struck down on the ground that the police force being deemed one for the whole State, promotion throughout from constable upwards should be on the basis of the whole State

Note :—This three tier system prevalent in Police force in Rajasthan does not contravene Art 14 and 16 (1) of the Constitution

Ram Sharan Vs The Dy. Inspector General of Police Ajmer
A.I.R 1964 S C. 1559

Police Diary

A Judge is in error in making use of the Police Diaries at all in his judgment and in seeking confirmation of his opinion on the question of appreciating of evidence from statements contained in those diaries The only proper use he could make is one allowed by section 172 Cr. P.C i e during the Judge can get assistance from them by suggesting means of further elucidating points needs clearing up and which might be necessary for the purpose of doing justice between parties the parties.

Habeeb Mohammad Vs The State of Hyderabad
A.I R. 1954 S C. 51 (c) 1954 Cri. L J. 338

(*Police Diary-contd*)

(ii) It is wrong to say that in every murder case, the court must scrutinise the police diary and make a list of witnesses whom the prosecution must examine is virtually to suggest that the court should itself take the role of prosecutor.

Darya Singh Vs The State of Panjab
A.I.R 1965 S.C 328 : 1965 (1) Cri. L.J. 350

(iii) The record made by a Police Investigating Offiicer has to be considered by the court only with a view to weighing the evidence actually adduced in the Court. If the Police record becomes suspect or unreliable on the ground that it was deliberately perfunctory or dishonest it looses much of its value and the court in judging the case of the accused has to weigh the evidence given against him in court. Statements made by prosecution witnesses before the investigating police officer being the earliest statement made by them with reference to the facts of the occurance are valuable material for testing the veracity of the witnesses examined in court, with particular reference to those statements which happen to be at variance with their earlier statements, but the statements made during police investigation are not substantive evidence.

Baladin Vs The State of Uttar Pradesh
A.I.R. 1956 S.C. 181 : 1956 Cri. L.J. 345

Police Officer

A police officer never acts judicially and no proceeding before a police officer is deemed under any provision to be a judicial proceeding for the purpose of Ss 193 and 228, I.P.C., or for any purpose. It is well-settled that the Customs Officers, when they act under the Sea Customs Act to prevent the smuggling of goods by imposing confiscation and penalities, act judicially. A custom Officer either under the Land Custom act (1924) or under the Sea Custom Act (1878) is not a Police Officer for the purpose of Section 25 of Evidence Act.

The State of Panjab Vs Barkat Ram
A.I.R. 1962 S.C. 276 : 1962 (1) Cri. L.J. 217

(ii) Customs Officers are not police officers and statements made to them are not inadmissible under S. 25 of the Ev. Act. Section 24 would however apply, for customs authorities must be taken to be persons in authority and the statements would be inadmissible in a criminal trial if it is proved that they were caused by inducement, threat, or promise.

Soni Vallabhdas Liladhar Vs The Asst. collector of customs Jamnagar
A.I.R. 1965 S.C. 481 : 1965 (1) Cri L.J. 490

Police Regulation

Rule 109 of U.P. Police Regulations Chapter XI has not statutory founda-

tion but is only an injunction by the executive Government to the Police Officers as to how they must regulate their work and conduct themselves during the course of investigation.

Niranjan Singh Vs State of Uttar Pradesh
A.I R. 1957 S.C. 142 : 1957 Cri. L J. 294

Police Report

(i) Inordinate delay of seven months in submitting police report under section 173 Cr P.C was condemned It is of utmost importance that invastigatıan into criminal offences must **always be free** from any objectionable features or infirmities which may legitimately lead to the grievance of the accused that the work of investigation is carried on unfairly or with any ulterior motive.

R.P. Kapur Vs State of Panjab
A.I.R. 1960 S.C. 866 : 1960 Cri. L.J. 1239

(ii) Police report mentioned in S. 207 (a) CrPC is the report mentioned in S. 190 (1) (b), and once cognizance is taken under S. 120 (1) (b), a proceeding is instituted within S. 207(a).

Raghubans Dubey Vs State of Bihar
A.I.R. 1967 S.C. 1167 (August Part) 1967 Cri. L J. 1081

Police Rule

An offence U/s 402 Penal Code is cognizable offence and falls under rule I and not under 111 of the U.P. Police Regulations.

State of Uttar Pradesh Vs Babu Ram
A.I R 1961 S.C. 751 : 1961 (1) Cri. L J. 773

Police Rules and Act

The Police Act and the Police Ragulations, made in the exercise of the powers conferred on the Government under that Act, which were preserved under S. 243 of the Government of India Act, 1935, continue to be in force after the Constitution so far as they are consistent with the provisions of the Constitution.

State of Uttar Pradesh Babu Ram
A.I.R. 1961 S C. 751 : 1961 (1) Cri. L.J. 773

Police Rules

Three tier system prevalent in police force in State of Rajsthan does not contravene Act. 14 and 16 (1) of the Constitution.

Ram Sharan Vs The Dy. Inspector General of Police Ajmer
A.I R. 1964 S.C. 1559

Police Trap

The Magistrate should not be employed by the Police as witness of Police Trap.

Rao. Shiv Bahadur Vs Vindh-P.
A.I.R. 1954 S.C 322 : 1954 Cri. L.J. 910

(ii) Magistrate should not be relegated to the position of a partisan witness and should not be used by Police in a Trap.

The State of Bihar Vs Basawan Singh
A.I.R. 1958 S C. 500 : 1958 Cri. L J. 987

Punjab Police Rules

Under Section 23 of the Police Act, 1861, the police is under a duty to prevent commission of offences and to collect intelligence affecting the public peace. For the efficient discharge of their duties, the police officers are empowered by the Punjab Police Rules, 1934 to open the history sheets of suspects and to enter their names in police register No 10 These powers must be exercised with caution and in strict confirmity with the rules. The condition precedent to the opening of history sheet under Rule 23. 9 2 is that the suspect is a person "reasonably believed to be habitually addicted to crime or to be an aider or abettor of such person."

If the action of the police officers is challenged they must justify their action and must show that the condition precendent has been satisfied.

A habitual offender or a person habitually addicted to crime is one who is a criminal by habit or by disposition formed by repetition of crimes Reasonable belief of the police officer that the suspect is a habitual offender or is a person habitually addicted to crime is sufficient to justify action under Rules 23 4 (3) b) and 23 9 (2). Mere belief is not sufficient. The belief must be reasonable It must be based on reasonable grounds

Dhanji Ram Vs Superintedant of Police North Dist Delhi Police
A.I R. 1966 S.C. 1766 (Page 1767/68) : 1966 Cri L.J. 1486

Position of accused

An accused person does not come into picture at all till process is issued but he is not precluded from being present himself or through counsel when an enquiry is held by a Magistrate but he has no right to take part in proceedings nor the magistrate can permit him to do so. No question to witness at the instance of the accused can be put.

Note :—Enquiry is bad if certain witnesses are exemined at the instance of the accused.

Chandra Deo Singh Vs Prokash Chandra Bose alias Chobi Bose
A.I.R. 1963 S.C. 1430 : 1963 (2) Cri. L J 397

Possession

(i) It is the duty of the Prosecution in order to bring home the guilt of a person U/s 411 IPC to prove;

1. that the stolen property was in the possession of the accused;
2. that some other person than the accused had possession of the property before the accused got possession of it.

and

3. that the accused had knowledge that the property was stolen property.

Note :—Property cannot be said to be recoverd from the possession or at the instance of the accused when the same has been recovered from the open field accessible to everybody.

Trimbak Vs The State of Madhya Pradesh
A.I.R. 1954 S.C. 39 : 1954 Cri. L.J. 335

(ii) Accused and the deceased were seen together at 2 P.M. on the day of occurrence and immediately after the accused went to dispose of the Ornaments Ornaments were established to be the ornaments worn by the deceased and the accused was not in a **position to give any satisfactory explanation** as to how he came to be in possession of the same on the very same day or the day the murder was committed, the circumstantial evidence was sufficient to hold the accused responsible for the murder.

Sunder Lal Vs The State of Madhya Pradesh
A.I.R. 1954 S.C. 28 : 1954 Cri L.J. 257

(iii) Although the ownership of trunks from where 76 bottles of foreign liquor were recovered, is of the appellant, yet the entire handling of these trunks, their packing and unpacking, was in the hands of his servant Gangaram Makarji who had in his possession their keys. In one of these trunks the personal belongings of Gangaram were also found, the likelihood of Gangaram Makarji taking advantage of his control and possession of his master's luggage, to bring into Abu Road a large quantity of liquor for his own purpose and profit cannot altogether be excluded. Gangaram Makarji may well have calculated that having regard to the status of his master his luggage was unlikely to be searched.

Note:—Appeal was allowed.

Maharaj Prithvisinghji Bhimsinghji Vs State of Bombay
A.I.R. 1960 S C. 483 : 1960 Cri L J 672

(iv) An employee of the accused in the premises can not be said to be in possession of things belonging to his master unless they were left in his custody.

Keki Bejonji Vs State of Bombay
A.I.R. 1961 S C. 967

(v) Where stolen letters were found in an almirah of the house in which the appellant lives jointly with his father and of which the key was furnished by

(Possession-contd)

the father. The circumstance that the almirah contained, apart from the registered letters in question, certain articles belonging to the appellant cannot sustain an inference that the almirah was in the appellant's possession exclusively or even jointly with his father.

Note:—The appeal was allowed.

Radha Krishan Vs State of Uttar Pradesh
A.I.R. 1963 S.C. 822 : 1963 (1) *Cri. L.J. 809*

(iv) To commit theft one need not take movable property permanently out of the possession of another person. A temporary period of deprivation or dispossession of the property of another causes loss to the other. That a person will act dishonestly if he temporarily dispossesses another of his property is made clear by illustrations (b) and (l) of S. 378 of the Indian Penal Code.

Note:—The appellant took away the file from the record which was in the possession of the Engineering department, the department of which appellant himself was the superintendent and was intending to return the file next day and which was removed only for showing documents to one R.

Held:—A temporary removal of file has for a short period deprived the engineering department of the possession of said file. Temporary deprivation causes loss to another. So offence of theft has been committed.

Pyare Lal Vs The State of Rajasthan
A.I.R. 1963 S.C. 1094 : 1963(2) *Cri. L.J. 178*

(vii) Fishes are also regarded as being in the possession of a person who owns an exclusive right to catch them in a particular spot known as a fishery but only within that spot. There can thus be theft of fish from a tank which belongs to another and is in his possession, if the offender catches them without the consent of the owner and without any bonafide claim of right.

Chandi Kumar Das Karmarkar Vs Abanidh Roy
A.I.R. 1965 S.C. 585 : 1965(1) *Cri. L J. 496*

Power

(i) In an appeal against acquittal the Appellate Court has full power to review the evidence upon which the order of acquittal is founded. But the Appellate court should interfere only on substantial and compelling reasons and the reasons which lead it to hold that the acquittal was not justified,

Note :—The order of reversing the aquittal was upheld.

Sanwant Singh Vs The State of Rajasthan
A.I.R. 1961 S.C. 715 : 1961 (I) Cri. L J 766

(ii) The Magistrate cannot exercise his powers under the Criminal Procedue Code in connection with property seized under sub section (3) of Section 19 of the Foreign Exchange Regulation Act.

Nilratan Sircar Vs Lakshmi Narayan Ram Niwas
A I.R. 1965 S.C. 1 : 1965 (1) Cri. L J. 100

(*Power-contd*)

(iii) Where power is conferred on a person by name or by virture of his office the individual designated by name or as the holder of the office for the time being is empowered specially.

Sindhi Lohana Choithram Parasram Vs The State of Gujarat
A.I R. 1967 S C. 1532 (October Part) : 1967 Cri. L.J. 1396

Power of appellate Court

(iv) In an appeal against the order of acquittal on a charge of murder under section 417 Cr. P.C. while the appeal court has full power to review the whole case. The court must start with reasonable doubt in respect of the guilt of the accused on evidence put before the court. It requires strong and cogent reasons to overcome this doubt before the appeal court comes to a different conclusion.

Note :—Appeal of the accused was allowed.

Tulsiram Kanu Vs The State
A.I.R. 1954 S.C. 1 : 1954 Cri. L.J. 225

(ii) Section 423 (1) (b) of Criminal Procedure Code does empower the Appellate Court to order commitment for trial to the Court of Sessions. This power to order commitment U/s 423 (1) (b) is not limited to cases exclusively triable by the court of Sessions.

Note : - In case reported in AIR 1962 S.C 1154 the appellant had cut the nose of a lady and the Session Judge while accepting the appeal against conviction remanded and further ordered that the case be committed to the court of Sessions. This Order was restored by the Supreme Court.

Inder Lal Vs Lal Singh
A.I.R. 1962 S.C. 1154 : 1962 (2) *Cri. L J. 261*

Power of High Gourt

(i) Even in app-als against acquittals the powers of the High Court are as wide as in appeals from conviction. But there are two points to be borne in mind in this connection one is that in appeal from acquittal, the presumption of innocence of the accused continues right upto the end : the second is that great weight should be attached to the view taken by the Session Judge beforc whom the trial was held and who had the opportunity of seeing and hearing the witnesses.

Note :—Order of acquittal was restroed.

Wilayat Khan Vs The State of U.P.
A I.R. 1953 S C. 122 : 1953 Cri L.J. 662

(ii) The High Court has power U/s417 Cr.P.C. to reverse a judgment, of acquittal unless the judgment is perverse or the subordinate court has in some way or other

(*Power of High Court-contd*)

misdirected itself so as to produce a miscarriage of justice. Section 417,418 and 423 of Cr P C. give to the High Court full power to review at large the evidence upon which the order of Acquittal was founded.

The High Court should consider

1 The views of the trial judge as to the credibility of the witnesses.

2. The presumption of innocence in favour of the accused

(A presumption, certainly not weakened by the fact that he has been acquitted at the trial.)

3. The right of the accused to the benefit of any doubt.

4 The slowness of an appellate court disturbing a finding of fact arrived at by a judge who had the advantage of seeing the witnesses.

Note:—The acquittal order was restored.

Piandas Vs The State
A.I.R. 1954 S C. 36 : 1954 Cri. L.J. 331

(iii) Article 134 of the Constitutution and Art. 136 do not provide for an appeal from a judgment, final order or sentence in a criminal proceedings of a High Court if the High Court has on appeal reversed an order of conviction of an accused person and has ordered his acquittal. In other words, there is no provision in the constitution corresponding to section 417 Cr.P.C. and such an order is final, subject however to the overriding powers vested in the Supreme Court under Art. 136 of the Constitution.

The State Govt. of Madhya Pradesh Vs Ram Krishna Ganpatrao Linsey
A.I.R. 1954 S C. 20 : 1954 Cri. L J 244

(iv) The High Court in the reference may exercise any of the powers which it might exercise upon an appeal and this includes the Powers to call fresh evidence conferred by Section 428. The High Court must consider the whole case and give due weight to the opinions of the Sessions Judge and jury and then acquit or convict the accused.

Ramyed Rai Vs The State of Bihar
A.I R. 1957 S.C. 373 : 1957 Cri L.J 557

(v) It is open to the High Court, while deciding an appeal from an order of acquittal, to convict the accuesed person of an offence other than that with which he had been charged. Section 423 (1) (a) Cr.P.C. gives this power to a High Court.

Note :—In this case High Court convicted the appellant U/s 403 IPC when he was charged U/s 420 IPC. Supreme Court holding it to be within the powers of the High Court, acquitted the appellant as no case U/s 403 IPC was proved.

Ramaswamy Nadar Vs The State of Madras
A.I R. 1958 S C. 56 : 1958 Cri. L.J. 228

(*Power of High Court-contd*)

(vi) The High Court in dealing with appeals against acquittal is entitled to reach its own conclusion upon the evidence adduced by the Prosecution in respect of the guilt or innocence of the accused.

M.G. Agarwal Vs State of Maharashtra
A.I.R. 1963 S.C. 200 : 1963 (1) Cri. L.J. 235

(vii) Even if the trial Court had disbelived the evidence, it is still open to the High Court, on a reconsideration of the matter, to come to a contrary conclusion. It is true that in dealing with oral evidence a Court of Appeal wouldnormally be reluctant to differ from the appreciation of oral evidence by the trial Court because obviously the trial Court has the advantage of watching the demeanour of the witnesses; but that is not to say that even in a proper case. the Appeal Court cannot interfere with such appreciation.

Jai Dev Vs The State of Punjab.
A.I.R. 1963 S.C. 612 : 1963(1) Cri L.J. 495

(viii) The mere fact that the Session Judge acquitted the other accused on the ground that the property recovered was not proved to be stolen property did not preclude the State from appealing against one of the accused alone against whom there was better evidence for establishing that he was in possession of the stolen property. The High Court could record its own finding.

Ajendranath Vs The State of Madhya Pradesh
A.I.R. 1964 S C 170 : 1964(1) Cri.L.J. 129.

(ix) Sections 417, 418 and 423 of the Code give to the High Court full power to review at large the evidence upon which the order of acquittal was founded, and to reach the conclusion that upon that evidence the order of acquittal should be reversed. In declining to accept the testimony of the witnesses who claim to have seen the assault, the Sessions Judge did not appreciate the full significance of the very important circumstance that on the person of the four eye witnesses there were injuries which on the medical evidence must have been caused at or about the time when the fatal assault was made upon one Pratap. It is highly improbable that all these witnesses who were members of the same family suffered injuries-some of which were severe in some other incident or incidents on the day and about the time when Pratap was fatally injured, and then they conspired to bear false testimony that they were persent at the time of the assault upon Pratap. The presence of the four injured persons Ganesh, Prabhu, Mohan and Gulab at the scene of offence is assured by the evidence of injuries, and must, as the High Court observed, be regarded as established beyond reosonable doubt.

Note :—Appeal was dismissed and Conviction was upheld as the High Court rightly setaside the order of acquittal of Noor Khan appellant.

Noor Khan Vs State of Rajasthan,
A.I.R 1964 S.C. 286 : 1964 (1) Cri. L.J. 167

(*Power of High Court-contd*)

(x) The High Court can in the exercise of its inherent jurisdiction expunge remarks made by it or by a lower court if it be necessary to do so to prevent abuse of the process of Court or otherwise to secure the ends of justice. The jurisdiction is however of an exceptional nature.

Note :—Remarks against the Police were expunged.

The State of Uttar Pradesh Vs Mohammad Naim
A.I.R. 1964 S.C. 703 : 1964(1) Cri. L J. 549

(xi) The powers of the High Court in an appeal from an acquittal are in no way different from those in an appeal from a conviction. The High Court can consider the evidence and weigh the probabilities. It can accept evidence rejected by the Sessions Judge and reject evidence accepted by him unless the Sessions Judge relied upon his observations of the demeanour of a particular witness. In departing from the conclusions of the Sessions Judge the High Court must pay due attention to the grounds on which the acquittal is based and repel those grounds satisfactorily bearing in mind always that an accused starts with a presumption of innocence in his favour and this presumption of innocence cannot certainly be less stronger after the acquittal. If these matters are properly kept in view and the acquittal is reversed, there can be no objection because our Criminal jurisdiction empowers the High Court to reverse an acquittal.

Note :—Appeal against reversing the Judgment of Acquittal was upheld. Sentence was maintained.

Sher Singh and others Vs The State of Uttar Pradesh
A.I.R. 1967 S.C. 1412. : 1967 Cri. L J. 1213

(xii) The Additional Sessions Judge has no authority to set aside the acquittal of the appellant under the provisions of S. 437, Criminal Procedure Code. But when the order of the Additional Sessions Judge has been affirmed by the High Court in its order under appeal and under S. 439, Criminal Procedure Code the High Court has jurisdiction to interfere with an order of acquittal in revision and to direct that the accused may be retried on the graver offence.

Ramekhal Tiwary Vs. Madan Mohan Tiwary
A.I.R. 1967 S C. 1156 : 1967 Cri. L.J 1076

(xiii) The Supreme Court will not readily interfere with the finding of fact given by the High Court but if the High Court acts perversely or otherwise improperly interference will be called for. Where the Judgment of the Lower Court shows that certain salient pieces of evidence were missed or were not appreciated, the Supreme Court will interfere. A I R. 1954 S.C 20 AIR 1957 S C. 589 referred and 1956 S.C.158 explained: which merely emphasises that only for error of fact or law Supreme Court should interfere. Judgement of High

Court passed in another case declaring wrongly a statute ultravires can be rectified by the Supreme Court in Revison Petition of a Separate case.

State of Madras Vs Vaidyanatha Iyer
A.I.R. 1958 S.C. 61 : 1948 Cri. L J. 252

Power of Special Court

The Proviso to S.4 of the West Bengal Criminal Law Admendment (Special Courts) Act (21 of 1949) provides for the trial of the accused for any other offence provided that accused could be charged with that offence at the same trial under the provisions of the Code of Criminal Procedure. The proviso does not say that the charge must be framed, though of course, if the trial Court itself tries the accused for a certain offence, it will ordinarily frame a charge. The proviso empowers a Court to try the accused for that offence and has nothing to do with the power of the Trial Courtt or of the Appellat Court to record a conviction for any other offence when an accused is being tried with respect to an offence mentioned in the Schedule.

Note:—In case reported in 1965 S.C. 706 accused was convicted U/s 409 IPC by Special Judge (of which he had jurisdiction) but the Calcutta High Court altered the conviction from 409 IPC to 420 IPC (an offence for which Special Judge had no jurisdiction). Special Court could try the accused U/s 420 IPC alongwith an offence U/s 409 IPC. so none-framing of charge U/s 420 IPC does not in view of the provisions U/s 237 Cr. P.C. vitiate the trial. The sentence was upheld.

Sunil Kumar Paul Vs The State of West Bengal
A.I.R. 1965 S.C. 706 : 1965 (1) Cri. L J. 630 (May Part)

Power of Police Officer

Where the informatiom discloses a cognizable as well as a non-cognizable offence the Police officers is not debarred from investigating any non-cognizable offence which may arise out of the same facts. He can include the non-cognizable offence in the charge sheet which he presents for a cognizable offence, Where a Police officer investigated an offence U/s 7 of the Essential Supplies Act though non-cognizable alongwith Section 420 IPC, the trial could proceed for the said offence U/s 251-A Cr. P.C. So the investigation is valid.

Pravin Chandra Mody Vs State of Andhra Pradesh
A I.R. 1965 S.C. 1185 : 1965 (2) Cri. L J. 250

Practice of Supreme Court—Special Leave

In Pritam Singh Versus The State of Punjab reported in A I R. 1950 S. C. 169 while delivering the Judgment Justice Fazil Ali stated "on a careful examination of Art. 136 alongwith the preceding article, it seems clear that the wide discretionary power with which this Court is invested under it is to be exercised sparingly and in exceptional cases only, and as far as possible a more

(*Practice S.C- contd*)

or less uniform standard should be adopted in granting special leave in the wide range of matters which can come up before it under this article. By virtue of this article, we can grant special leave in civil cases, in criminal cases, in income tax cases, in cases which come up before different kinds of tribunals and in a variety of other cases The only uniform standard which in our opinion can be laid down in the circumstances is that Court should grant special leave to appel only in those cases where special circumstances are shown to exist. The Privy Council have tried to lay down from time to time certain principles for granting special leave in criminal cases, which were reviewed by the Federal Court in Kapildeo Vs. The King, (A.I.R. (37) 1950 F.C. 80 : 51 Cr L. J 1057). It is sufficient for our purpose to say that though we are not bound to follow them too rigidly since the reasons, constitutional and administrative, which sometimes weighed with the Privy Council, need not weigh with us, yet some of those principles are useful as furnishing in many cases a sound basis for invoking the discretion of this Court in granting special leave Generally speaking, this Court will not grant special leave, unless it is shown that exceptional and special circumstances exist that substantial grave injustice has been done and that the case in question presents features of sufficient gravity to warrant a review of the decision appealed against. Since the present case does not in our opinion fulfil any of these conditions, we cannot interfere with the decision of the High Court, and the appeal must be dismissed."

Pritam Singh Vs The State
A.I R. 1950 S.C. 169

(ii) It is not the practice of Supreme Court in special leave cases to interfere with a matter which rests in the discretion of the High Court except in very exceptional cases.

M Y. Shareef Vs Hon'ble Judges of the Nagpur High Court
A.I.R. 1955 S.C. 19 : 1955 Cri. L.J. 133

(iii) Ordinary, Supreme Court in a Criminal Appeal would not enquire into the question of fact but where three persons have been sentenced to death on the opinion of the third judge, the Supreme Court deemed it advisable to examine the evidence.

Pandurang Vs The State of Hyderabad
A I.R. 1955 S.C. 216 . 1955 Cri.L.J. 572

(iv) In appeal by special leave, the Supreme Court cannot consistently with its practice, cover itself into a third court of facts. Concurrent findings of fact arrived at by the Court below cannot be interfered unless there are excep-

tional grounds.

Note:—See also 1961 S.C. 715 : 1961(1) Cri L J. 167.

Gurbakhsh Singh Vs The State of Panjab
A.I.R. 1955 S.C. 320 : 1955 Cri. L.J. 869

(v) The Supreme Court will be slow to entertain question of prejudice when details are not furnished. The fact that the objection is not taken at an early stage will also be taken into account It is not the practice of Supreme Court to re-assess the evidence in Special leave. Where the two courts of facts are concurrent over the question of common object and unlawful assembly the Supreme Court will not interfere

Sukha Vs The State of Rajasthan
A.I.R. 1956 S.C. 513 : 1956 Cri L.J. 928

(vi) Supreme Court will not interfere with the finding of High Court yet where the evidence is such that no Tribunal could legitimately infer from it that the accused is guilty it would set aside the conviction.

Bhagwan Das Vs The State of Rajasthan
A.I.R. 1957 S.C. 589 : 1957 Cri. L.J. 889

(viii) One Division Bench of High Court has no jurisdiction to sit in judgment of another Division Bench.

Sidheswar Ganguly Vs The State of West Bengal
A.I.R 1958 S.C. 143 1958 Cri. L.J. 273

(vi) Normally Supreme Court would not review evidence unless there is gross miscarriage of justice.

Shambu Nath Singh Vs The State of Bihar
A.I.R. 1960 S.C. 725 : 1960 Cri L.J. 1144

(x) Supreme Court does not generally interfere with interlocutory orders under Art. 136. Supreme Court while following usual practice would not interfere with the order of remand passed by the High Court directing, fresh trial.

Madanraj Vs Jalamchand Lodha
A.I.R. 1960 S.C. 744 : 160 Cri. L.J. 1151

(xi) The Supreme Court would not ordinarily interfere with the quantum of punishment.

Ramanlal Mohan Lal Vs The State of Bombay
A.I.R. 1960 S.C. 961 . 1960 Cri. L J. 1380

(xii) An appellate Court has full power to review the evidence upon which the order of acquittal is founded ; (2) the principles laid down in Sheo Swarup's case, 61 Ind App. 398 ; (AIR 1934 PC 227 (2) afford a correct guide for the appellate court's approach to a case in disposing of such an appeal : and (3)

the different Phraseology used in the judgments of this Court, such as, (i) "substantial and compelling reason", (ii) "good and sufficiently cogent reasons", and (iii) "strong reasons are not intended to curtail the undoubted power of an appellate court in an appeal against acquittal to review the entire evidence and to come to its own conclusion ; but in doing so it should not only consider every matter on record having a bearing on the questions of fact and the reasons given by the court below in support of its order of acquittal in its arriving at a conclusion on those facts, but should also express those reasons in its judgment, which lead it to hold that the acquittal was not justified. Article 136 of the Constitution confers a wide discretionary power on Supmreme Court to **entertain appeals in suitable cases not otherwise provided for by the Constitution.** It is implicit in the reverse power that it cannot be exhaustively defined, but decided cases do not permit interference unless "by disregard to the forms of legal process or some violation of the principles of natural justice or otherwise, substantial and grave injustice has been done."Though Art. 136 is coched in widest terms, the practice of this Court is not to interfere on question of fact except in exceptional cases when the finding is such that it shocks the conscience of the court

Note :—Supreme Court did not find infirmity in the Judgment of the High Court.

Sanwant Singh Vs The State of Rajasthan
A.I.R. 1961 S C. 715 : 1961 (1) Cri. L.J. 766

(xiii) Supreme Court would not interfere with the conclusion of the High Court especialy when its attention has not been invited to any substantial infirmity in the reasoning of that court.

Noor Khan Vs The State of Rajashthan
A.I.R. 1964 S.C. 286 : 1964 (1) Cri. L J. 167

(xiv) Snpreme Court has undoubtedly jurisdiction to interfere even with findings of fact arrived at by the High Court in an appeal setting aside those of a subordinte Court acquitting the accused, But this wide jurisdiction has to be regulated by the practice of this Court. The fact that the appellate Court in setting aside the order of acquittal has not followed the principles laid down by this Court in Sanwat Singh's case, (1961) 3 SCR 120 : AIR 1961 SC 715 A may certainly be a ground for this Court for interfering with the judgment of High Court.

Note :—No exceptional circumstance to depart from the usual practice was found.

Nihal Singh Vs The State of Punjab
A.I.R. 1965 S.C. 26 : 1965 (1) Cri. L J. 105

(xv) Supreme Court is not a court of appeal in criminal matters except on a certificate by the High Court or in the exceptional case described in Art. 134 of the Constitution.

It is not the practice of the Supreme Court in a criminal appeal on special leave to examine at large the evidence in the case unless there are circumstances which make it feel that there has been a miscarrirge of the justice.

Mohinder Singh Vs The State of Punjab
A.I.R. 1966 S.C. 79

(xvi) Supreme Court will not allow finding of fact by lower courts to be challenged in appeal.

Kanwar Singh Vs The Delhi Administration
A I.R. 1965 S.C. 871 : 1965 (2) Cri. L.J. 1

(xvii) It is the practice of the Supreme Court not to interfere with concurrent finding of fact even in regular appeals and particularly so in appeal under Art.-cle 136 of the Constitution,

Bhagwan Swarup Lal Bishan Lal Vs The State of Maharashtra
A.I.R. 1965 S C. 682 : 1965 (1) Cri. L J. 608

(xviii) It is not the practice of Supreme Court to express opinion on questions which do not arise for decision in the case in hand.

Sindhilohana Vs The State of Gujarat
A.I.R. 1967 S.C. 1532 1967 Cri L.J. 1396

Practice of Supreme Court

(xix) The Supreme Court will not entertain a criminal appeal except in special and exceptional cases but where the appellant has been convicted notwithstanding the fact that the evidence is wanting on a most material part of the prosecution case, the supreme court will entertain the appeal.

Note:—In the case reported in A.I.R. 1953 S.C 415 the decision of the High Court was arrived at in disregard of the principle that the standard of proof which is required in regard to the plea of alibi must be the same as the standard which is applicable to prosecution evidence. Appeal was allowed as there was no fair and proper trial. Case was not remanded as the same will further embarras the accused who has been in a state of suspense over his sentence of death for over a year.

Mohinder Singh Vs The State
A.I R. 1953 S.C. 415 · 1953 Cri L J. 1716.

(xx) Ordinarily the Supreme Court will not look beyond the finding of fact arrived at by the court below, but where decision on the plea of alibi has been arrived

(*Practice-contd*)

at in disregard to the principle that the standard of proof which is required to that plea must be the same as the standard which is applied to the prosecution evidnce and in both the cases it should be a reasonsable standard.

Note·—There was no fair and proper trial as the plea of alibi put forward by the accused was not disposed of properly. So the appeal was allowed

Mohinder Singh Vs The State
A.I R. 1953 S.C. 415 . 1953 Cri. L.J. 1761

(xxi) Normally Supreme Court does not proceed in review the evidence in appeal in criminal cases, unless the trial is vitiated by some illegality or irregularity of procedure or the trial is held in a manner violation of the rules of natural justice resulting in an unfair trial or unless the judgment under appeal has resulted in gross miscarriage of justice It cannot be said that identification of the assailant by Rakha Singh, from what he heard and observed was so improbable that Supreme Court, be justified in disagreeing with the opinion of Court which saw the witness and formed its opinion as to his credibility and of the High Court which considered the evidence against the appellant and accepted the testimony.

Kripal Singh Vs The State of Uttar Pradesh.
A.I.R. 1965 S.C. 712 . 1965 (1) Cri. L.J. 636

(xxii) By special leave to embark on as assessment of the evidence when two courts have already assessed it and came to concurrent conclusions therefrom, Supreme Court will not interfere

1967 S.C. 522

Precedent

(i) Reference to rported case is only by way of illustration and not by way of an appeal to precedent, because on the facts no two cases can be similar. Each case has its own peculiar facts and it is therefore, always risky to appeal to precedents on question of fact.

Gurcharan Singh Vs The State of Panjab
A.I.R. 1956 S.C. 460 : 1956 Cri. L.J. 827

(ii) English decisions have only pursuasive value in India.

Bondada Gajahathi Vs The State of Andhrapradesh
A.I.R 1964 S.C 1645 : 1964 (2) Cri. L.J. 598

Prejudice

(i) Where the particulars and details were all on the record before the charges were framed and the accused could not have been misled by the vague and

indefininte charges non-mentioning of the mode in which the cheating had been done when in fact no girevance was made by him or his advocate on that score before the trial court The irregularity complained of cannot be held to have caused any real prejudice to the accused and does not vitiate the trial

K. Damadaran Vs The State of Travancore-Cochin
A.I.R. 1953 S C. 462 : 1953 Cri. L J. 1313

(ii) The omission to frame a charge is a grave defect and should be vigilantly guarded against In some cases. it may be so serious that by itself it would vitiate a trial and render it illegal, prejudice to the accused being taken for granted

Held :—that omission to frame a sparate charge U/s 302 Penal Code is only a curable irregularity which in the absence of prejudice could not affect the legality of conviction under section 302 Penal Code.

Willie (William) The State of Madhay Prades
A.I.R. 1956 S.C. 116 : 1956 Cri L J. 191

(iii) The appellant has been charged with three offences under S 409 and one uuder S. 477-A. But the case is governed by S. 235. as the several offences under Ss. 409 and 477-A arise out of the same facts and form part of the same transaction. Moreover, the appellant has failed to show any prejudice as required by S. 537 This objection must accordingly be overruled. And where the accused appeared through a counsel and no objection about the charge was taken in the trial court, it means no prejudice has been caused

Chandi Prasad Singh Vs State of Uttar Pradesh
A.I.R. 1956 S C 149 · 1956 Cri. L.J. 322

(iv) The Supreme Court will be slow to entertain question of prejudice when details are not furnished. The fact that the objection is not taken at an early stage will also be taken into account.

Sukha Vs The State of Rajasthan
A.I R. 1956 S.C. 513 · 1956 Cri. L J. 923

(v) A judgment is not to be set aside merely by reason of inadequate compliance with section 342 Cr.P C. Clear prejudice must be shown. "If the counsel was unable to say that his client had in fact been prejudiced and if all that he could urge was that there was a possibility of prejudice, that was not enough." Non-examination or inadequate examination U/s. 342 Cr. P.C. in a jury trial cannot be presumed to cause prejudice.

Moseb Kaka Vs State of West Bengal
A.I.R. 1956 S.C. 536 : 1956 Cri L J. 940

(vi) If the accused is not afforded opportunity under section 342 Cr.P.C. he is entitled to ask the appellate court to place him in the same position as he would have been

K.C. Mathew Vs The State af Travancore Cochiv
A.I.R. 1956 S.C. 241 : 1956 Cri. L.J. 44

(vii) Once the murder cum-riot conviction is upheld and once the court makes the sentences concurrent instead of consecutive, it does not matter that no question was put to the accused about any robbery.

K C Mathew Vs The State of Travancore Cochin
A.I.R. 1956 S.C. 241 : 1956 Cri. L.J. 444

(vii) Where it was established that the statements of witnesses recorded by a police officer during the course of the investigation were made available only at a late stage of the trial, no prejudice was caused to the accused even though the defence did not get them earlier. That in judging a question of prejudice, as of guilt, courts must act with a broad vision and look to the substance and not to technicalities and their main concern should be to see whether the accused had a fair trial, whether he knew what he was being tried for, whether the main facts sought to be established against him were explained to him fairly and clearly and whether he was given a full and fair chance to defend himself. The facts that the cross examining counsel in the Sessions case did not have in his hands the copies of the statements of the witnesses in the connected Arms Act case, would not have made any difference

Gurbachan Singh Vs The State of Punjab
A.I R. 1957 S.C. 623 : 1957 Cri. L J. 1009

(ix) Where the evidence of certain witnessess is not given by the prosecution an adverse inference can be drawn. The Judge should direct the jury to take the same. If these directions have not been given, this defect was not likely to have caused any serious prejudice

Sardul Singh Vs The State of Bombay
A.I.R. 1957 S.C. 747 : 1957 Cri. LIJ. 1325

(x) The omission to mention Section 34 of the Penal Code in the charge cannot affect the case unless a prejudice is shown to have resulted in consequence thereof. The imperfection in the charge is curable provided no prejudice has been shown to have reasulted because of it. The appellants had notice that they were being tried as "shares in the offence" and their liability was collecttive and vicarious and not individual. No doubt they were charged under S 149 of the Indian Penal Code with being members of an unlawful assembly the common object of which was murder of the deceased but they were also charged that they with accused Nos. 5 & 6 had commited murder by intentionally causing the death of the deceased. That the accused had clear notice

(*Prejudice-contd*)

that they were being charged with the offence of committing murder in pursuance of their common intention and therefore, the omission of S. 34 in the charge had only academic significance and had in no way misled the accused. Thus the accent was on whether the accused were misled or not or any prejudice resulted from the omission in the charge and on the facts and circumstances of that case this Court was of the opinion that they were not and there was no prejudice.

B.N. Shrikantiah Vs State of Mysore
A.I.R. 1958 S.C. 672 : 1958 Cri. L.J. 1251

(xi) That the alteration of conviction from Section 299 to 300 of Calcutta Municipal Act does not cause substantial prejudice to the accused.

Nani Gopal Biswas Vs Municipality Howrah
A.I.R. 1958 S.C. 141 : 1958 Cri. L J. 271

(xii) The failure of the Magistrate to put the accused any specific question under Section 342 Cr.P.C. to explain the possession of the still and various other articles found in the premises occupied by the accused cannot be said to have caused any prejudice to the appellants.

Keki Bejonji Vs State of Bombay
A.I.R. 1961 S.C. 967

(xiii) Non-compliance with the provisions of Section 271 Cr. P.C. i e. omission by the trial court to read **out and explain charges framed by** Magistrate does not vitiate the trial unless prejudice is shown, this irregularity is curable U/s 537 Cr.P.C.

Banwari Vs State of Uttar Pradesh
A.I.R. 1962 S.C. 1198 : 1962 (2) Cri. L J. 278

(xiv) Where the charges with respect to the gross sum embezzled within the period between 6 3-1949 and 30-6-1950 the charge contravenes the proviso to Section 222 (2) of Criminal Procedure Code but the defect does not cause prejudice to the accused and does not vitiate the trial as the charge could have been split into two and the two charges could be tried together at one trial in view of the provisions of section 235 (1) of Criminal Procedure Code.

State of Bombay Vs Umarsaheb Buransaheb Inamdar
A.I.R. 1962 S.C. 1153 : 1962 (2) Cri. L J. 259

(xv) The failure to refer in the charge to other members of the unlawful assembly un-named and un-identified may conceivably raise the point as to whether prejudice would be caused to the person before the court.

Note :—No prejudice was found as there is no legal bar preventing the court of facts from holding that although the charge specified only five or more

mbly. It was necessary, therefore, for the prosecution to lead evidence pointing to the conclusion that all the appellants had done or had been commiting some overt act in furtherance of the common object of the unlawful assembly.

Baladin VS The state of Uttar Pradesh.
1956 S.C. 181 : 1956 Cri. L. J. 345

President

Art. 370(1)(c) and (d) authorize the President by Order to specify the exceptions and modifications to the Provisions of the Constitution (other than Art. icles I and 370) subject to which the Constitution shall apply to the State of Jammu and Kashmir. Clause (c) as indicated above has been added to Art. 35 of the Constitution only so far as the State of Jammu and Kashmir is concerned.

P.L. Lakhanpal Vs The State of Jammu and Kashmir.
A.I.R. 1956 S.C. 197 : 1956 Cri. L J. 421

(ii) Sale of scrap Iron by employees of Association at prices in excess of those fixed for Association The liability is of the Association and the president.

Harish Chandra Vs The State of Madhya Pradesh
A.I.R 1965 S.C. 932 : 1965 (2) Cri. L.J. 24

Presidential Order

(iii) The Presidential order under Art. 359(1) of the Constitution cannot widen the authority of legislature or the Executive, it merely suspends the right to move any court to obtain a relief on the ground that the rights conferred by Part III have been contravened if the said rights are specified in the order.

Makhan Singh Vs The State of Panjab
A.I.R. 1965 S C. 381 : 1964 (1) Cri. L.J. 269

(iv) During the pendency of the Presidential Order the validity of the Ordinance or any rule or order made thereunder cannot be questioned on the ground that it contravenes Arts. 14, 21 and 22. But this limitation cannot preclude a citizen from challenging the validity of the ordinance or any rule or order made thereunder on any ground other than the contravention of Arts. 14, 21 and 22 the Presidential Order cannot come into operation. It is not also open to the appellant to challenge the Order on the ground of contravantion of Art, 19 because as soon as proclamation of Emergency is issued by the President under Art. 358 the provisions of Art. 19 are automatically suspended. But the appellant can challenge the validity of the order on a ground other than those covered by Art. 358, or the Presidential order issued under Art. 359(1). Such a challenge is outside the purview of the Presidential Order.

Jai Chand Lal Sethi Vs State of West Bengal and others
A.I.R. 1967 S.C. 483 (April Part) : 1967 Cri.L.J. 520

(*Prejudice-contd*)

that they were being charged with the offence of committing murder in pursuance of their common intention and therefore, the omission of S. 34 in the charge had only academic significance and had in no way misled the accused. Thus the accent was on whether the accused were misled or not or any prejudice resulted from the omission in the charge and on the facts and circumstances of that case this Court was of the opinion that they were not and there was no prejudice.

B.N. Shrikantiah Vs State of Mysore
A.I.R. 1958 S.C. 672 : 1958 Cri. L J. 1251

(xi) That the alteration of conviction from Section 299 to 300 of Calcutta Municipal Act does not cause substantial prejudice to the accused.

Nani Gopal Biswas Vs Municipality Howrah
A.I.R. 1958 S.C. 141 : 1958 Cri. L.J. 271

(xii) The failure of the Magistrate to put the accused any specific question under Section 342 Cr P.C. to explain the possession of the still and various other articles found in the premises occupied by the accused cannot be said to have caused any prejudice to the appellants.

Keki Bejonji Vs State of Bombay
A.I.R. 1961 S.C. 967

(xiii) Non-compliance with the provisions of Section 271 Cr. P.C. i.e. omission by the trial court to read **out and explain charges framed by** Magistrate does not vitiate the trial unless prejudice is shown, this irregularity is curable U/s 537 Cr.P.C.

Banwari Vs State of Uttar Pradesh
A.I R. 1962 S.C. 1198 : 1962 (2) Cri. L.J. 278

(xiv) Where the charges with respect to the gross sum embezzled within the period between 6 3-1949 and 30-6-1950 the charge contravenes the proviso to Section 222 (2) of Criminal Procedure Code but the defect does not cause prejudice to the accused and does not vitiate the trial as the charge could have been split into two and the two charges could be tried together at one trial in view of the provisions of section 235 (1) of Criminal Procedure Code.

State of Bombay Vs Umarsaheb Buransaheb Inamdar
A I.R. 1962 S.C. 1153 : 1962 (2) Cri. L.J. 259

(xv) The failure to refer in the charge to other members of the unlawful assembly un-named and un-identified may conceivably raise the point as to whether prejudice would be caused to the person before the court.

Note :—No prejudice was found as there is no legal bar preventing the court of facts from holding that although the charge specified only five or more

mbly. It was necessary, therefore, for the prosecution to lead evidence pointing to the conclusion that all the appellants had done or had been committing some overt act in furtherance of the common object of the unlawful assembly.

Baladin VS The state of Uttar Pradesh.
1956 S.C. 181 : 1956 Cri. L. J. 345

President

Art. 370(1)(c) and (d) authorize the President by Order to specify the exceptions and modifications to the Provisions of the Constitution (other than Art. icles I and 370) subject to which the Constitution shall apply to the State of Jammu and Kashmir. Clause (c) as indicated above has been added to Art. 35 of the Constitution only so far ,as the State of Jammu and Kashmir is concerned.

P.L. Lakhanpal Vs The State of Jammu and Kashmir.
A.I.R. 1956 S.C. 197 : 1956 Cri. L J. 421

(ii) Sale of scrap Iron by employees of Association at prices in excess of those fixed for Association. The liability is of the Association and the president.

Harish Chandra Vs The State of Madhya Pradesh
A.I.R 1965 S.C. 932 : 1965 (2) Cri. L.J 24

Presidential Order

(iii) The Presidential order under Art. 359(1) of the Constitution cannot widen the authority of legislature or the Executive, it merely suspends the right to move any court to obtain a relief on the ground that the rights conferred by Part III have been contravened if the said rights are specified in the order.

Makhan Singh Vs The State of Panjab
A.I.R. 1965 S C. 381 . 1964 (1) Cri. L.J. 269

(iv) During the pendency of the Presidential Order the validity of the Ordinance or any rule or order made thereunder cannot be questioned on the ground that it contravenes Arts. 14, 21 and 22. But this limitation cannot preclude a citizen from challenging the validity of the ordinance or any rule or order made thereunder on any ground other than the contravention of Arts. 14, 21 and 22 the Presidential Order cannot come into operation. It is not also open to the appellant to challenge the Order on the ground of contravantion of Art, 19 because as soon as proclamation of Emergency is issued by the President under Art. 358 the provisions of Art. 19 are automatically suspended. But the appellant can challenge the validity of the order on a ground other than those covered by Art. 358, or the Presidential order issued under Art. 359(1). Such a challenge is outside the purview of the Presidential Order.

Jai Chand Lal Sethi Vs State of West Bengal and others
A.I.R. 1967 S.C. 483 (April Part) : 1967 Cri.L.J. 520

Presiding Officer

When there is a dispute as to what happened before a court or tribunal, the statement of the Presiding Officer in regard to it is generally taken to be correct.

Note:—In case allegation against the Presiding Officer was that he never gave opportunity to cross-examination but that was contradicted by the presiding Officer thraugh affidavit presiding Officer's contention was taken as correct.

Union of India Vs T R. Varma
A.I.R. 1957 S.C. 882

Press

The press has great power in impressing the minds of the people and it is essential that persons responsible for publishing anything in newspaper should take good care before publishing anything which tends to harm the reputation of a person. Reckless comments are to be avoided when one is proved to have made defamatory comments with an ulterior motive and without the least justification motivated by self interest, he deserves a deterrent sentence.

Note;—In this case the appellant an Editor of local Newspaper published certain news items amounting to the defamation of the prosecution Branch of Aligarh. Sentence U/s 500 IPC was maintained.

Sahib Singh Vs State of Uttar Pradesh.
A.I.R. 1965 S.C. 1451 : 1965 (2) Cri. L.J. 434

Presumption-Deposition

Where the certificate of the committing magistrate endorsed on the deposition sheet states that the deposition was read over to the witness and the witness admitted to be correct,the court is bound to accept it as correct until it is proved to be untrue.

Bhagwan Singh Vs The State of Punjab
A.I.R. 1952 S C. 214 · 1952 Cri. L J. 1131

(ii) Continuous cohabiation of a man and woman as husband and wife. They were being treated as such for a number of years, it raises presumption of marriage but the prosecutor which may be drawn from long cohabitation is rebuttable, and if there are circumstances which weaken or destroy thatpresumption, the Court cannot ignore them.

Gokal Chand Vs Parvin Kumari
A.I.R. 1952 S C. 231

(iii) After an order of acquittal has been made the presumption of innocence is further reinforced by that order, and that being so, the trial court's decision can be reversed not on the ground that the accused had failed to explain the circumstances appearing against him but only for very substantial and com-

Note:—Mere passing of money to the accused is not sufficient to raise the presumption U/s 4 of the Prevention of Corruption Act. Appeal was allowed.

The state of Ajmer VS Shivji Lal.
A.I.R.1959 S. C· 847 : 1959 Cri. L. J. 1129
But see A. I. R 1966 S.C. 1762, 1966 Cri L. J. 1357.

(xii) Section 5 (3) of the Prevention of Corruption Act does not create a new offence but only lays down a rule of evidence, enabling the court to raise a presumption of guilt in certain circumstances. A rule which is a complete departure from the established principle of criminal jurisprudence that the burden always lies on the prosecution to prove all the ingredients of the offence charged, and that burden never shifts on to the accused to disprove the charge framed against him. As soon as the requirements of sub-s (3) of S. 5, have been fulfilled, the Court will not only be justified in making but is called upon to make, the presumption that the accused person is guilty of criminal misconduct within the meanting of S. 5 (1) (d). The charge under S. 5 (1) (d) does not require any such proof. If there is evidence **forth coming** to satisfy the requirements of the earlier part of sub-s (3) of S. 5, conviction for criminal misconduct can be had on the basis of the presumption which is a legal presumption to be drawn from the proof of facts in the earlier part of sub-s. (3) as aforesaid. That is what has been found in this Case by the courts below against the accused person. Hence, the failure of the charge under Cl. (a) of sub-s. (1) of S. 5, does not necessarily mean the failure of the charge under S. 5 (1) (d).

Note:—On the basis of mere presumption conviction was upheld.

C. S. D. Swami VS The state.
A.I.R. 1960 S.C. 7 : 1960 Cri. L. J. 131

(xiii) There can be imitation for the purposes of Penal Code even though the imitation is not exact. Where the resemblence is such that a person might be deceived thereby in such a case, the intention to deceive or knowledge of likelihood of deception would be presumed.

Note:—Imitation was found but the case was remandad on other grounds. Acquittal was set-aside

Note:—There was resemblence in the wrappers used by the accused on his soaps with the genuine label, and wrappers of the Sunlight and Life Buoy Soaps of the Complainant

The state of Uttar PradeshV S Hafiz Mohd.
A.I R 1960 S.C. 669 : 1960 Cri. L. J. 1017

Presiding Officer

When there is a dispute as to what happened before a court or tribunal, the statement of the Presiding Officer in regard to it is generally taken to be correct.

Note:—In case allegation against the Presiding Officer was that he never gave opportunity to cross-examination but that was contradicted by the presiding Officer thraugh affidavit presiding Officer's contention was taken as correct.

Union of India Vs T.R. Varma
A.I.R. 1957 S.C. 882

Press

The press has great power in impressing the minds of the people and it is essential that persons responsible for publishing anything in newspaper should take good care before publishing anything which tends to harm the reputation of a person. Reckless comments are to be avoided when one is proved to have made defamatory comments with an ulterior motive and without the least justification motivated by self interest, he deserves a deterrent sentence.

Note;—In this case the appellant an Editor of local Newspaper published certain news items amounting to the defamation of the prosecution Branch of Aligarh. Sentence U/s 500 IPC. was maintained.

Sahib Singh Vs State of Uttar Pradesh.
A.I.R 1965 S.C. 1451 : 1965 (2) Cri. L.J. 434

Presumption-Deposition

Where the certificate of the committing magistrate endorsed on the deposition sheet states that the deposition was read over to the witness and the witness admitted to be correct,the court is bound to accept it as correct until it is proved to be untrue.

Bhagwan Singh Vs The State of Punjab
A.I.R 1952 S C. 214 : 1952 Cri. L.J. 1131

(ii) Continuous cohabiation of a man and woman as husband and wife. They were being treated as such for a number of years, it raises presumption of marriage but the prosecutor which may be drawn from long cohabitation is rebuttable, and if there are circumstances which weaken or destroy thatpresumption, the Court cannot ignore them.

Gokal Chand Vs Parvin Kumari
A.I.R. 1952 S.C. 231

(lii) After an order of acquittal has been made the presumption of innocence is further reinforced by that order, and that being so, the trial court's decision can be reversed not on the ground that the accused had failed to explain the circumstances appearing against him but only for very substantial and com-

Note:—Mere passing of money to the accused is not sufficient to raise the presumption U/s 4 of the Prevention of Corruption Act. Appeal was allowed.

The state of Ajmer VS Shivji Lal.
A.I R 1959 S. C· 847 : 1959 Cri. L. J. 1129
But see A. I. R 1966 S.C. 1762, 1966 Cri L. J. 1357.

(xii) Section 5 (3) of the Prevention of Corruption Act does not create a new offence but only lays down a rule of evidence, enabling the court to raise a presumption of guilt in certain circumstances. A rule which is a complete departure from the established principle of criminal jurisprudence that the burden always lies on the prosecution to prove all the ingredients of the offence charged, and that burden never shifts on to the accused to disprove the charge framed against him. As soon as the requirements of sub-s (3) of S. 5, have been fulfilled, the Court will not only be justified in making but is called upon to make, the presumption that the accused person is guilty of criminal misconduct within the meaning of S. 5 (1) (d). The charge under S. 5 (1) (d) does not require any such proof. If there is evidence **forth coming** to satisfy the requirements of the earlier part of sub-s (3) of S. 5, conviction for criminal misconduct can be had on the basis of the presumption which is a legal presumption to be drawn from the proof of facts in the earlier part of sub s. (3) as aforesaid That is what has been found in this Case by the courts below against the accused person Hence, the failure of the charge under Cl. (a) of sub-s (1) of S. 5, does not necessarily mean the failure of the charge under S. 5 (1) (d).

Note:—On the basis of mere presumption conviction was upheld.

C. S. D. Swami VS The state
A.I.R. 1960 S C. 7 : 1960 Cri. L. J. 131

(xiii) There can be imitation for the purposes of Penal Code even though the imitation is not exact Where the resemblence is such that a person might be deceived thereby in such a case, the intention to deceive or knowledge of likelihood of deception would be presumed.

Note:—Imitation was found but the case was remandad on other grounds. Acquittal was set-aside

Note:—There was resemblence in the wrappers used by the accused on his soaps with the genuine labels and wrappers of the Sunlight and Life Buoy Soaps of the Complainant.

The state of Uttar PradeshV S Hafiz Mohd.
A.I R 1960 S.C. 669 : 1960 Cri. L. J. 1017

Presumption-contd)

(xiv) In India if an accused pleads an exception within the meaning of section 80 of the Penal Code, there is a presumption against him and the burden to rebut the presumption lies on him.

K.M. Nanavati Vs State of Maharashtra
A.I.R. 1962 S.C. 605 : 1962 (1) Cri. L.J. 521

(xv) Presumption of innocence in favour of the accused is strengthened by the order of acquittal passed by the trial court.

M.G. Agarwal Vs State of Maharashtra
A.I.R. 1963 S.C. 200 : 1963 (1) Cri. L.J. 235

(xvi) Letter from under-secratry of the State Government to the Magistrate that sanction had been granted, a presumption would arise that sanction has been accorded.

Tulsi Ram Vs The State of Uttar Pradesh
A.I.R. 1963 S.C. 666 : 1963(1) Cri. L.J. 623

(xvii) The fact that there were acknowledgments in respect of three letters in the post office but tht existence of these acknowledgments would no more than raise a presumption that these articles were delivered to the addressees. The addressees have been examined in this case and they have deposed that the letters in question were not received by them, therefore the act of an officer of the post office in being in possession of a postal article for an inordinate length of time has no significance and cannot justify the conclusion that he had secreted the article. Mere opportunity to commit the offence does not raise the presumption of accoused's guilt.

Radha Kishan Vs State of Uttar Pradesh
A.I.R. 1963 S.C. 822 : 1963 (1) Cri L J. 809

(xviii) Under S. 114 of the Evidence Act it is open to the Court to draw or not to draw a presumption as to the existence of one fact from the proof of another fact and it is not obligatory upon the court to draw such presumption, under sub-sec. (1) of S. 4, of prevention of corruption Act however, if a certain fact is proved, that is, where any gratification (other than legal gratification) or any valuable thing is proved to have been received by an accused person, the court is required to draw a presumption that the person received that thing as a motive of reward such as is mentioned in S. 161, I P.C. Therefore, the Court has no choice in the matter, once it is established that the accused person has received a sum of money which was not due to him as a legal remuneration. Of course, it is open to that person to show that though that money was not due to him as legal remuneration it was legally due to him in some other manner or that he received it under a transaction or an arrangement which was lawful. The burden resting on the accused person in such a case would not be as light as it is where a presumption is raised under S. 114 of the Evidence Act and cannot be held to be

(Presumption-contd)

discharged merely by reason of the fact that the explanation offered by the accused is reasonable and probable. It is obligatory on the court to raise this presumption in every case brought under S. 4 of the Prevention of Corruption Act because unlike the case of presumption of fact, presumptions of law constitute a breach of jurisprudence.".

Note :—The appeal was dismissed.

Dhanvantrai Balwantrai Vs State of Maharashtra
A.I.R. 1964 S.C. 575 : 1964(1) Cri. L J. 437

See also 1958 S.C. 61 : 1958 Cri. L.J. 232

(xix) It is difficult to hold that because the accused in an enquiry for committal declines to avail himself of the opportunity to explain circumstances appearing against him from oral or documentary evidence a presumption may be raised against him. Declining to avail himself of such an opportunity and reserving his right to make a defence at the trial do not amount to refusal to answer a question.

Rammarayan Mor Vs The State of Maharashtra
A.I.R. 1964 S.C. 949

(xx) The presumption raised by clause (3) (2) of the Manipur Foodgrains Dealers Licensing Order, 1958 is a rebuttable presumption. If it is shown by a person with whom a storage of more than 100 mds. of one or the other of the prescribed foodgrains is found that the said storage was referable to his personal needs or to some other legitimate cause unconnected with and distinct from the purpose of sale, the presumption would be rebutted, in case, of course, the explanation given and proved by the person is accepted by the Court as reasonable and sufficient. It amounts to this and nothing more that the stock found with a given individual of 100 or more maunds of the specified food grains had been stored by him for the purpose of sale. Having reached this conclusion on the strength of presumption, the prosecution would still have to show that the store of the foodgrains for the purpose of sale thus presumed was made by him for the purpose of carrying on the business of store of the said foodgrains. The element of business which is essential to attract the provisions of cl. 3 (1) is thus not covered by this presumption raised under cls. 3(2).

Manipur Administration Vs M. Nila Chandra Singh
A.I.R. 1964 S C. 1533 : 1964(2) Cri, L J. 465

(xxi) The mere receipt of the money is sufficient to raise presumption under Section 4(1) of Prevention of corruption Act.

V.D. Jhingan Vs State of Uttar Pradesh.
A.I.R. 1966 S.C. 1762 : 1966 Cri. L.J. *1357*

(xxii) Every one is presumed to know the natural consequences of his act. Similaly every one is presumed to know the law. These are not facts which the prosecution has to establish.

(*Presumption-contd*)

The presumption of sanity arisen in favour of the posecution is rebuttable and the accused can rebut it either by leading evidence or by relying upon the prosecution evidence itself.

Note:—In this case the appeal of the accused was dismissed.

Behari VS The state of W. P.
A.I.R. 1966 S.C. I. (P. A. 6) : 1966 Cri L. J. 63

(xxiii) The seizure of instruments of gaming in the appellant's house entered under S. 6 raises a presumption under S. 7 of Bombay prevention gambling Act, that the house was being used as a common gaming house and the persons found therein were then present for the purpose of gaming. In applying this artificial presumption the Court should act with circumspection. Playing cards may be kept and used for innocent pastime. The presumption can be rebutted if from the prosecution evidence itself it is apparent that there was a reasonable probaility of the plaving cards not being kept or used as means of gaming or for the profit or gain of the occupier of the house.

Note:—the appellant could not successfully rebut the presumption. The resistance to the entry of the sub-Inspector and the attempt to burn, destroy and conceal the playing card fortified the presumption. Appeal was dismissed.

Sindhi Lohana Choithram Parasram VS The State of Gujarat.
A.I.R. 1967 S.C. 1532 (Oct. Part). 1967 Cri L. J. 1396

(xxiv) The mere fact that the consumption of energy was much less prior to that day dose not necessarily lead to the inference that there was dishonest abstraction of electricity energy. The prosecution must prove any perfected artificial meanes in existence as to raise the presumption of dishonest abstraction U/s 39 of the Electricity Act. (1910),

Ram Chandra Prasad VS The State af Bihar.
A.I.R. 1967 S.C. 349 : 1967 Cri. L. J. 409

(xxv) The presumption permitted to be drawn u/s 114 Illustration (a) Evidence Act, has to be read along with the important time factor. If ornaments or things of the deceased are found in the possession of a person soon after the murder, a presumption of guilt may be permitted. But **if several months expire in the interval**, the presumption may not be permitted to be drawn to the circumstances of the case.

Note: —In this case recovery was made aftey 5-1/2 months so the presumption U/s 114 EV. Act was not drawn.

Tulsiram Kanu V S The state-
A.I.R. 1954 S. C. 1 : 1954 Cri. L. J. 225.

Prevention of Corruption Act

(i) The only material that was placed before the Sessions Judge was the aplication field by the sub Inspector befor the Magistrate seeking the said permission and the order made by him thereon. In that application the Sub-Inspector stated that he had been deputed to investigate the case and therefore permission might be given to him do so under S-5-A of the Act. on that application, the Magistrate passed the order" "permission given".

Neither the application nor the order made thereon discloses that any material was placed before the Magistrate on the basis of which he gave the permission Held the Magistrate did not realise the significance of his order giving permission, but only mechanically issued the order on the basis of the application which did not disclose any reason, presumably because he thought that what was required was only a formal compliance with the provisions of the Section. So the provisions of S. 5-A of the Act have not been strictly complied with in this case.

Note:—Appeal of the state was dismissed and the order of High Court by which fresh investigation by D. S. P. was ordered to rectify the defect and cure the illegality, was confirmed.

The state of Madhya Pradesh VS Mubarok Ali
A.I.R. 1959 S. C. 707 : 1959 Cri. L. J. 93.

(ii) The burden of proof lying upon the accused under Section 4(1) of the Prevention of Corruption Act will be satisfied if the accused person establishes his case by a preponderance of probability and it is not necessary that he should establish his case by the test of proof beyond a reasonable doubt. In other words, the onus on an accused person may well be compared to the onus on a party in civil proceedings, and just as in civil proceedings

V.D. Jhingan Vs State of Uttar Pradesh
A.I.R. 1966 S.C. 1762 (Para 4) : 1966 Cri. L.J. 1357

(iii) The mere receipt of the money is sufficient to raise a presumption under Section 4(1) of Prevention of Corruption Act.

V.D. Jhingan Vs State of U.P.
A.I R. 1966 S.C. 1762 : 1966 Cri. L J. 1357

(iv) A lay man not experienced in the interpretation of documents, can hardly be expected without legal aid which is denied to him, to interpret the grounds in the proper sense. It is therefore, upto the detaining authority to make his meaning clear beyond doubt, without leaving the person detained to his own resource for interpreting them otherwise such ground would be regarded as vague.

Held·—Grounds were held to be vague so the petition was allowed and the petitioner was released.

(*Prevention of Corruption Act-contd*)

Dr. Ram Krishan Vg The State of Delhi
A.I.R. 1953 S.C. 318 : 1953 Cri. L J. 1241

(v) The preventive Detention Act is not ultravires the constitution with the exception of S. 14 which being severable from the rest of the Act, does not affect the validity of the latter in any way.

Ashutosh Lahiry VS The Delhi State
A.I.R. 1953 S.C. 451 : 1953 Cri. L.J. 1921.

(vi) An act which is to be done forthwith must be held to have been so done, when it is done with all **responsible** dispatch and without avoidable delay and must be done with reasonable speed and expedition, that delay if any in the matter should be satisfactorily explained.

The word' forthwith in section 3 (3) of Prevention Detention Act cannot mean the same thing

Held—On facts the delay of 8 days between the passing of the order of detention and the making of report was unavoidable and that the report was sent forthwith" within the meaning of section 3 (3) of the Act.

Keshev Nilkanth Joglekar VS The Commissioner of Police greater Bombay.
A.I.R. 1957 S.C. 28 : 1957 Cri. L.J. 10.

(vii) The words "grounds on which the order has been made" occurring in section 3 (3) of the Prvention Detention Act when construed in their natural and ordinary sense, would include any information or material on which the order was based-the scope of section 3 (3) is different from Section 7 which deals with the right of the detenu, as against the State Government and its authorities. Section 7 requires the statement of grounds to be sent to the detenu so that he might make a reperesentation against the order.

That the failure on the part of the District Magistrate to send along-with his report U/s 3 (3), the very grounds which he subsequently communicated to the detenu U/s 7 (4) was not a breach of the requirement of that section and it was sufficiently complied with when he reported the materiel on which he made the order.

Shamrao Vishnu Parulekar VS The District Magistrate Thana.
A.I.R. 1957 S.c 23 : 1957 Cri. L.J.5.

(viii) The scheme of Rr 30(1)and30-A of Defence of India Rules is totally different from that of the Preventive Detention Act. Where an order is made under R. 30 (1)(b), its review is at intervals of periods of not more than six months. The object of the review is to decide whether there is a necessity to continue the detention order or not in the light of the facts and circumstances including any development that has taken place in the meantime. If the

(Prevention Act-contd)

reviewing authority finds that such a development has taken place in the sense that the reasons which led to the passing of the original order no longer subsist or that some of them do not subsist, that is not to say that those reasons did not exist at the time of passing the original order and, therefore, the satisfaction was on grounds which did not then exist,

P. L. Lakhanpal VS Union of India.
A.I.R. 1967 S C. 908

(ix) Court is not entitle to consider the matter under Ss. 3 & 4 of the Prevention Detention Act (1950) as an appellate Tribunal but is only entitled to see that the grounds are relevent for proper Exercise and are sufficiently informative to enable the detenu to make proper representation when the grounds are either non-existing or vague or not germane to question of detention, the detention is illegal.

Chhedi Sao V/s State of Bihar & another.
Criminal Appeal No 234 of 1967 Decided on 8.1.1968

(x) **Note**—Please see further 'GROUNDS' and 'Detention'.

Prevention of Food and Adulteration Act

(i) The section 21 of the Prevention of Food Adulteration Act authorises a magistrate of the First Class to award a sentence beyond the limits prescribed by section 32 of the Code of Criminal Procedure.

State of Uttar Pradesh Vs Khushi Ram
A.I.R. 1960 S.C. 905 : 1960 Cri. L.J. 1378

(ii) Rule 5 of the Prevention of Food Adulteration Act does not contravene Art-14 of the Constitution. A person cannot assent any fundamental right under Art. 19 (1) of the Constitution to carry on business in adulterated food stuff.

Note:—Ghee was found to be adulterated. Sentence of 18 days already undergone was considered sufficient to meet the ends of justice.

The State of Uttar Pradesh Vs Kartar Singh
A.I.R. 1964 S.C. 1135 1964 (2) Cri. L J. 229

(iii) The words "Second offence" means any act which is an offence under any of the clauses in the sub-section which has been done later in point of time after a conviction for an offence under the Act, no matter whether the acts or commissions constituting the two offences are of the same type or not. First offence of keeping of food stuff and second offence of selling may not be offences of same type but are under the same act, so the conviction was held to be proper.

Jagdish Prasad Vs State of Uttar Pradesh
A.I.R. 1966 S.C. 290 : 1966 Cri. L J. 194

(iv) No standard in regard to Butter Milk contents is prescribed. Inference from other standards cannot be drawn.

M.V. Krishnan Nambissan Vs State of Kerala
A.I.R. 1966. S.C. 1676 : 1966 Cri. L.J. 1347

(v) Where Dahi or curd, other than skimmed milk dahi is sold or offered for sale without any indication as to whether it is derived from cow or buffalo milk, the standards prescribed for dahi prepared from buffalo milk shall apply.

M.V. Krishnan Nambissam Vs State of Kerala
A.I.R. 1966 S C. 1676 (Page 1678) : 1966 Cri. L.J. 1347

Previous Statement

(i) Previous statement of the witness in the committing court who resiled in the Sessions Court cannot be used unless the formalities of S. 288 Cr. P. C. were observed: But the previous statement must be substantive evidence transmuted into one U/s 157 Evidence Act. S. 288 of the Criminal P.C. could be used to make the former statement substantive evidence because what the section says is "subject to the provisions of the Indian Evidence Act," and not subject to any particular section in it. Section 157 is as much as provision of the Indian Evidence Act as S. 145 and if the former statement can be brought in under S. 157 it can be transmuted into substantive evidencc by the application of S. 288. When the previous statement is a long one and only one or two small passages in it are used for contradiction that may, in a given case, confuse a witness and not be a fair method of affording him an opportunity to explain but in the present case the previous statement is a short one and the witness was questioned about every material passage in it point by point. Accordingly, the procedure adopted was in substantial compliance with what Section 145 requires. There can be no hard aud fast rule. All that is required is that the witness must be treated fairly and be afforded a reasonable opportunity of explaining the contradictions after his attention has been drawn to them in a fair and reasonable manner.

Bhagwan Singh Vs The State of Panjab
A.I R. 1952 S.C. 214 : 1952 Cri. L.J. 1131

(ii) Evidence given at preliminary enquiry [is admissible in trial before Sesstion Judge.

Chittaranjan Das Vs State of West Bengal
A.I.R. 1963 S.C. 1696 : 1963 (2) Cri. L.J. 534

(iii) The witnesses in their statements before the Police attributed a clear intention to the accused to commit murder, but before the court they stated that the accused was insane. Held it was necessarily implied in the previouss tatements of the witnesses before the police that the accused was not insane at the time of murder. So the previous statement before the police could be used to con-

(*Previous Statement-cantd*)

tradict their version in the court.

Dahyabhai Chhaganbhai Vs State of Gujarat
A.I.R.1964 S.C. 1563 : 1964(2) Cri. L.J. 472

(iv) (i) Previous Statement was held u/s 157. Evidence Act, corroborative evidence Provided it was made "at or about the time when the fact took place"

Rameshwar Vs State of Rajasthan
See 1952 S.C.R. 377 : A.I.R. 1952 S.C. 54

(ii) The use of of the previous statement of an accomplice is to make the accomplice corroborate himself

Babhoni Sahu Vs Emperor
A.I.R. 1937 Cal. 39.

(v) The former statement made by witness verbally to the District Judge was admissible under s. 157 as having been made at or about the time of the alleged incident. Section 157 no doubt makes a former statement of a witness admissible if it relates to the same fact and if it was made at or about the time when such a fact took place. The section is an exception to the rule that a person cannot corroborate himself.

Though admissible, such a former statement can only be used for corroboration and not as substantive evidence of the fact in issue. Even as corroboration the value of such a statement must always depend on the peculiar circumstances of each case. This is so because the witness may have sufficient interest in making false assertions in the past and a person can be consistently untruthful with a purpose. The weight to be attached to such a statement was another matter and it might be that in some cases the evidentiary value of the two statements emanating from the same tainted source may not be high. In Bhogi Lal Vs The State of Bombay (1962 Suppl. SCR 310, 315) the question was whether a former statement not communicated to another i.e. notes made by witness in his diary, constituted a former statement within the meaning of s 157. It was held that it was so, but it was also pointed out that "the main evidence is the statement of the witness in the witness-box and a document of this nature is only used to corroborate him. If the main evidence is shaken by cross-examination corroboration of such a document would be of no use."

Gauranga Charan Mohantry Vs The State of Orissa
Criminal Appeal No 61 of 1965 decided on 24-11-67

Prima-Facie

(i) The fir[illegible]andar[illegible]quired to be made by S. 479-A (1) is only of a prima facie n[illegible] standar[illegible]t ce finding which would have any force at the trial upon the [illegible]ursuant to that finding Further, this notion of avoiding

prejudice would not justify a clear breach of the terms of the section.

Dr B.K. pal Chaudhry Vs State of Assam
A.I R. 1960 S.C. 133 : 1960 Cri. L.J. 174.

(ii) The appropriate authorities of granting sanction must be satisfied that there is a prime-facie case for starting the prosecution and this prima-facie satisfaction has been interposed as a safe guard before the actual prosecution commenced. The object of S 197(1) Cr.P C. is to save public servant from frivolous prosecution.

R.R. Chari Vs State of Uttar Pradesh
A I.R. 1962 S.C. 1573 · 1962(2) Cri.L.J. 510

(iii) Where the High Court of Calcutta has ordered the Registrar of that Court to make a complaint in writing against the appellants for their prosecution under Ss. 193, 199 and 211 of the Indian Penal Code, the High Court, however, certified the case as fit for appeal under Art 134 (1,(c) of the constitution. Supreme court will not ordinarily do more than examine in such case whether the High court has fairly considered a case to reach the conclusion that prima facie there is good reason to launch the prosecution, that othere is reasonable prospect of conviction and that it is expedient in the interest of justice to order a prosecution

Held —High Court of Calcutta correctly viewed the case and the order of lodging the complaint was upheld

Hari Das Vs State af west Bengal
A.I.R. 1964 S.C. 1773 : 1964(2) Cri. L.J. 737

Private Defence

(i) The right of private defence does not arise if there is time to have recourse to the protection of the public authorities It also does not extend to the infliction of more harm than is necessary for the purpose of defence.

The man claiming right of private defence must be under reasonable apprehension of death or grevious hurt to himself or to those whom he is protecting and in the case of property the danger to it must be of the kind specified in S. 103 of I P.C

Facts:—A communal riot broke out at Kanti on 5.3.1950 between some Sindhy refugees resident in the town and the local Muslims. The mob or crowd had already broken into one part of the building of the appllant and was actually beating on the doors of the other part It is also evident that the appellant had reasonable grounds for apprehending that either death or grievous hurt would be caused either to himself or to his family. The circumstances in which he was placed were amply sufficient to give him a right of private defence of the body even to the extent of causing death These things cannot be weighed in too fine a set of scales or, as some learned judges have expressed it, in golden scales.

(*Private defence-conted*)

Note:—(i) Appellant had no time to have recourse to the public authorities.

(ii) Appellant event did not use more force than was necessary. He fi'ed only two shots when the appellant was apprehending danger from Mob.

(iii) Appeal was allowed, conviction and sentence were set-aside.

Amjad Khan Vs The State
A.I.R. 1952 S.C. 165 : 1952 Cri. L.J. 848,

(ii) Where the appellant's sister was being abducted from her father's house by her husband, and there was an assault on her and she was being compelled by force to go away from her father's place The appellant had the right of private defence of the body of his sister against an assault with the intention of abducting her by force and that right even extended to the causing of death.

Note:—Appeal was allowed.

Vishwanath Vs The State of Uttar Pradesh.
A.I.R. 1960 S.O. 67 : 1960 Cri. L.J. 154

Right of private defence of property against criminal trespass.

(iii) Appellants, alongwith three other persons were alleged to have forcibly taken two carts loaded with sugarcane from the field of Suraj Bhan through the field of Harphool. In transporting the sugarcane from the field, about a furlong and a half away, to the public passage running by the side of Harphool's field, the two carts were inside the field of Harphool when the incident took place. They were near the boundary of Harphool's field. They must, in the circumstance, have been several yards inside the field. Criminal trespass had not therefore come to an end and therefore Harphool had the right to prevent the appellant's party from continuing to commit criminal trespass for whatever short distance they had still to cover before reaching the public pathway.

Hukam Singh Vs The State of Uttar Pradesh
A.I.R. 1961 S.C. 1551 : 1961(2) Cri L.J. 711

(iv) If the person claiming the right of private defence has to face assailant's who can be reasonably apprehended to cause grievous hurt to him, it would be open to him to defend himself by causing the death of the assailants. In judging the conduct of a person who proves that he had a right of private defence, allowance had necessarily to be made for his feelings at the relevant time. He is faced with an assault which causes a reasonable apprehension of death or of grievous hurt and that inevitably creates in his mind some excitement and confusion The prosecution case is that between 9 and 10 A. M. on the date of the offence, the appellants and their brothers Ram Pat and Basti Ram came to the field with their tractor and started ploughing the bajra crop which had been sown by the villagers who were tenants in possession. All the appellants were armed with deadly weapons and three

of them had fire-arms. Villagers came to take the possession. That inevitably led to an alteriation and an attempt was made to stop the working of the tractor. This immediately led to the terrible Scuffle which resulted in so many deaths, Amin Lal asked the appellants and their friends not to kill people but the only result of this intercession was that he was shot by the pistol of Budhbir Singh. Then everybody on the complainants'side started to run away. Thereafter Jai Narain was shot dead by the appellant Hari Sing. Dil Kaur was killed by Parbhati and others and the victim J. and Mst. Sagroli were shot dead by the appellant Jai Dev.

Held :—The appellants fired shots from their rifles, the villagers had already started running away and there was no danger either to the property or to the bodies of the assailants.

Note :—Appeal was dismisaed.

Jai Dav Vs. The State of Punjab,
A.I.R. 1963 S.C. 612 : 1963 (1) Cri. L. J. 495

(v) Where an individual citizen or his property is faced with a danger and immediate aid from the State machinery is not readily available, the individual citizen is entitled to protect himself and his property. That being so, it is a necessary corollary to the doctrine of private defence that the violence which the citizen defending himself or his property is entitled to use must not be unduly disproportionate to the injury which is to be averted or which is reasonbly apprehended and should not exceed its legitimate purpose. The exercise of the right of private defence must never be vindictive or malicious.

Note :—Conviction was up held

Jai Dev Vs. The State of Punjab
A.I.R. 1963 S.C. 612 : 1963 (1) Cri. L.J. 495

(vi) The deceased party went to cut the crop over the plot which was in the possession of the appellants but the intention of the deceased was peaceful and they were cutting the crops under the protection of the police and none of the deceased was in possession of any dangerous weapons. The sickles were used only by the labourers to cut the crops In the circumstances disclosed in the evidence it cannot be held that there was any reasonable apprehension on the part of the appellants that they could be killed or hurt by the deceased. The accused party armed with deadly weapons shot the deceased and others. Held :—That the act of the complainant party does not amount to robbery so the question of right of private defence could not arise.

Gurdatta Mal Vs, The State of Uttar Pradesh
A.I.R. 1965 S.C. 257 : 1965 (1) Cri. L.J. 242

(vii) The owner of the cattle has no right to use force to rescue the cattle which the accused seized under the cattle Tresspass Act as they were damaging his crop and the accused was within his rights to inflct grievious injuries in the right of his private defence.

Note :—See 'cattle Tress Pass at Page 51 for Facts,

Ramratan and others Vs. The State of Bihar and another
A I.R 1965 S.C. 926 1965 (1) Cri. L.J. 18

Private Party's Revision

(i) Though section 5 (1) of Section 439 CrPc authorises the High Court to exercise, in its discretion, any of the powers conferred on a court of appeal by section 423 CrPc Sub Section (4 of 439 specifically excludes the power to convert a finding of acquittal into one of conviction. This does not mean that in dealing with a revision petition of private party against an order of acquittal, the Court can in the absence of any error on a point of law reappraise the evidence and reverse the findings of facts on which the acquittal is based, provided only it stops short of finding the accused guilty and passing sentence on him.

Logendranath Jha Vs. Polai Lal Biswas
A.I R. 1951 S C 316 : 1951 Cri. L. J. 1248

(ii) The revisional jurisdiction conferred on the High Court under S. 439 Cr.Pc. is not to be lightly exercised, when it is invoked by a Private complainant against an ordes of acquittal, against which the government has the right to appeal.

Note:—Judgment of the High Court setting aside an order of acquittal passed by the Presidency Magistrate was set aside on this ground and the acquittal was restored.

Hari Har Chakarvarti Vs The State of West Bengal
A I.R. 1954 S.C. 266 : 1954 Cri. L.J. 724

(iii) In a case which has proceeded on a police report a private party has really no locus standi. No doubt, the terms of Section 435 under which the jurisdiction of the learned Session Judge was invoked are very wide and he could even have taken up the matter suo motu. It would, however, not be irrelevant to bear in mind the fact that the Court's jurisdiction was invoked by a private party. The criminal law is not to be used as an instrument of wrecking private vengeance by an aggrieved party against the person who, according to that party, had caused injury to it. Barring a few exceptions, in criminal matters the party who is treated as the aggrieved party is the State which is the custodian of the social interests of the community at large and so it is for the State to take all the steps necessary for bringing the person, who has acted against the social interests of the community, to book.

Note:—In this case magistrate declined to commit the cases to the court of Session and so rejected the prosecutions request for the same. The main informant'S preferred a Revision Petition before the Session judge and the Session Judge accepted the revision petition and orderd the cases be committed to the court of Session and this judgment was affirmed by the High Court

Held:—Session Judge wrongly accepted the Revision Petition of a Private Person when the State was not interested So the order for committing the case to the court of Session was quashed and directed the trial to proceed before the Magistrate according to law.

Thakur Ram Vs The State of Bihar
A.I R. 1966 S C. 911 (Page 917) . 1966 Cri L.J. 7

(iv) Private complainant has no locus Stand to File Revision against the order of withdrawl passed under Sec. 494 CrPc

A I R 1957 S C 389

Privilage

(i) There is no absolute privilege. even in favour of a member of the Legislature in respect of a publication not of the entire proceedings but of extracts from them. it it not necessary to decide the question whether disallowed question can be said to from part of the proceedings of a House of Legislature

Dr. Jatish Chandra Ghosh Vs Hari Sadhan Mukherje
A.I R. 1961 S C 613 · 1961(1) Cri L J 74

(ii) Conditions regulating the restrictions on the personal liberty of a detenu are not privileges conferred on him, but are the conditions subject to which his liberty can be restricted As there is no condition in the Bombay Conditions of Detention Order. 1951. prohibiting a detenu from writing a book or sending it for publication, the State of Maharashtra infringed the personal liberty of the Detenu in derogation of the law whereunder he is detained.

Note :—The appeal of the State was dismissed

The State of Maharashtra Vs Prabhakar Pandurang Sanzgiri
A.I.R. 1966 S.C. 424 (Para 8) : *1966 Cri. L J. 31*

Privileges to engage counsel

The right conferred by Section 340 (1) does not extend to a right in an accused person to be provided with a lawyer by the State or by the Police or by the Magistrate. That is a privilege given to him and it is his duty to ask for a lawyer if he wants to engage one and to engage one himself or get his relation to engage one for him. The only duty cast on the magistrate it to afford him the necessary opportunity.

Tara Sing Vs The State
A.I.R. 1951 S C. 441 : 1951 Cri L J. 149

Probation.

(i) Appellate court in appeal or High court in revision can make anorder under section 6 (1) of Probation of Offenders Act (1958).

Rattan Lal Vs The State of Punjab
A.I.R. 1965 S.C 444 1965 (1) Cri L J. 360

Proceedings

(i) The proceedings before the Sea Customs Authority under section 167 (8) of the Sea Custom Act are not Prosecution within the meaning of Art 20 (2) of the Constitution.

Thomas Dana Vs State of Punjab
A.I.R. 1959 S.C. 375 . 1959 Cri L.J. 39

(ii) Proceeding pending at the date of order of suspension of fundamental rights remains suspended during the time that the order is in operation and may be revived when the said order ceased to be operative.

Mahhan Singh Vs The State of Punjab
A.I.R 1964 S.C. 381 : 1964(1) Cri. L.J. 269

(iii) The proceedings U/s 491(b) constitute one proceeding intended to obtained relief, and the relief in such cases means the order of release of the detenu. when order of release of detenu cannot be challenged during the presidential order, it would not be open to the same detenu to claim a mere declration under S. 491 Cr.P C

Makhan Siagh Vs The State af Punjab
A.I.R. 1964 S C. 381 : 1964(1) Cri. L.J. 269

(iv) Proceedings before income tax officer are judicial proceedings.

Lalji Haridas Vs The State of Maharashtra
A.I R. 1964 S C. 1154 : 1964(2) Cri. L.J. 249

(vi) The police report mentioned in S. 207 (a) is the report mentioned in S.190 (1) (b), and once cognizence is taken under S 190 (1) (b), a proceeding is instituted within S 207 (a).

Raghubans Dubey Vs State of Bihar
A.I.R. 1967 S.C. 1167 (August Part).: 1967 Cri L.J. 1081

(v) A charge of having committed a contempt of court is a charge of having committed an offence within the mean ng of section 211.

Haridas VS The State of West Bengal.
A.I R. 1964 S.C. 1773: 1964 (2) Cri L.J. 937

Process.

(i) It is not obligatory on the magistrate to issue process against the person complaint against and leave them to establish his plea of self defence.

Vadilal Panchal Vs Datta traya Dulaji
A I R. 1960 S.C. 1113: 1960 Cri. L J. 1499

(ii) The magistrate is not obliged in complaint for offence not specified in part A of the fifth Schecule to make an endorsement in proccess in terms of Sec. 130 (1) (b) of Motor Vehicle Act. High Court has rightly laid down that magistrate has the option to issue a summons with an endorsement in terms of sub-section (1) (a) or of sub-section (i) (b) and only if a summon is issued with the endorsement specified by sub section (1) (b) it is open to the accused to avail himself of the option to plead guilty and to claim the privilege mentioned in sub section (3).

(*Process-contd*)

Note:—Reference by the Sessions Judge to the High Court that the order passed by the Magistrate be set aside, as the trial Magistrate having failed to comply with the mandatory terms of S 130 (1) (b) Motor Vehicle Act was rightly not accepted by the High Court.

Puran Singh Vs The State of Madhya Pradesh
A I R. 1965 S.C. 1583

(i) It is open to a Magistrate to hold an inquiry from the beginning under Ch. XVIII rather than a trial. Where the case is not exclusively triable by the Court of Sessions, the accused would naturally conclude that the proceedings before the Magistrate are in the nature of a trial and not an inquiry under Ch. XVIII. if the Magistrate intends to use his powers under S.207 and hold an inquiry from the beginning in a case not exclusively triable by the Court of Session, the only way in which the accused can reasonably conclude is that the Magistrate should inform that the inquiry and not the trial is being held.

Note:—Order of commitment was quashed and the case was sent back to the Magistrate to proceed in the manner indicated above. (Magistrate had not intimated the nature of proceedings to the accused.)

Chhadamilal sain Vs State of Uttar Pradesh
A I.R. 1960 S.C. 41 ; 1960 Cri. L.J 145.

(ii) Procedure established by law means procedure established by law made by the State that is to say, by the Union Parliament or by the Legislature of of the S ates.

Ram Chandra Prasad Vs State of Bihar
A.I R 1961 S.C. 1629. 1961 (2) Cri L.J. 811.

(iii) An offence punishable under Section 471 of Penal Code being one of fraudulently or dishonestly using as genuine any document which the accused knows or has reason to believe to be a forged document, does not fall within the ambit of section 479 (A) (i) of Cr. P. C. and therefore the authority of the court to act under Section 476 of the Code is not impaired by sub-section 6 of Section 479 A of Cr. P.C.

Babu Lal Vs State of Uttar Pradesh
A.I.R. 1964 S.C. 725 : 1964 (1) Cri L J. 555

(iv) All procedure is always open to a court which is not expressly prohibited and no rule of the court has laid down that the evidence shall not be received, if the court requires it.

Mohd. Ikram Hussain Vs The State of Uattr Pradesh
A.I R. 1964 S.C. 1625 : 1964 (2) Cri. L. J. 590

(*Process-contd*)

(v) The provisions relating to searches under the Code which apply to searches under sub-s(3) of S. 19 of Foreign Exchange Regulation Act are the provisions relating to the conduct of searches and that these provisions are under Ss. 101, 102 and 103 of the Code. What is to be done with the articles seized does not strictly come within the expression 'searches'. It is dealt within S 19A. It is therefore not correct for the appellant to say that the Magistrate can exercisehis powers under the Criminal Procedure Code in connection with property seized under sub-s.(3) of S. 19 of the Act.

Nihatan Sircar Vs Lakshmi Narayan
A I.R. 1965 S.C. 1 1965 (1) Cri. L.J. 100

(vi) If at the time when the judgment was delivered, the Magistrate had no material before him to form an opinion that the petitioner had given false evidence then Section 479-A of the Criminal Procedure Code will not be applicable. It is clear that the bar u/s 479-A(6) of the Code refers not to the legal character of the offence per se but to the possibility of action u/s 479-A upon the facts and circumstances of the particular case. If for instance material is made available to the court after the judgment had been pronounced, rendering it clearly beyond doubt that a person had committed perjury during the trial and material was simply unavailable to the court, before or at the time of Judgment the court is competent to act under the procedure prescribed in S. 476 Cr. P.C

Held·—Prosecution under the provisions of S 476 Cr P.C. by the magistrate after the conclusion of the trial is legally valid.

Kuppa Govndan Vs M.S.P. Rajesh
A.I.R. 1966 S.C. 1863 1966 Cri L.J 1503

(vii) Proceedings arising out of the reference under Section 146 Cr.P.C. are to be governed by the Civil Procedure Code but its appeal is barred by S.146 (1-d) of the Criminal Procedure Code So appeal is not maintainable.

Ram Chandra Vs The State of Uttar Pradesh
A.I R 1966 S.C 1888 1966 Cri. L J. 1514

Prohibition

(i) The prohibition contained in the opening words of clause (b) of section 52 of Factories Act is general and is not confined to the manager.

John Douglas Keith Brown Vs The State of West Bengal
A.I.R. 1965 S C. 1341 · 1965(2) Cri. L J. 423

(ii) No general permission can be granted under clause a and b of section 52 of Factories Act for exemption from prohibition.

A I R 1965S C. 1341 1965(2) Cri L.J. 423

(iii) Except for a general statement contained in the evidence of the witnesses that there was a strong smell of alcohol, emanating from the tins, which

were pierced open, there is no other satisfactory evidence to establish that the article is one coming withins the definition of the expression 'liquor'. Merely trusting to the smelling sense of the Prohibition Officers, and basing a conviction, on an opinion expressed by those Officers under the circumstances, cannot justify the conviction of the respondents. Better proof, by a technical person, who has considered the matter from a scientific point of view, is not only desirable, but even **necessary to establish that the article seized is** one coming within the definition of **'liquor'.**

State of Andhra Pradesh Vs Madiga Boosenna
A.I.R. 1967 S.C. 1550. 1967 Cri. L.J. 1398.

Proof

(i) It is not necessary to adduce direct evidence of the common intention. The common intention may be inferred from the surrounding circumstances and the conduct of the parties

Rishideo Pande Vs State of Uttar Pradesh
A.I.R. 1955 S.C. 331 : 1955 Cri. L.J.873

(ii) It is not necessary that the Bye- Laws of the Company must be proved by the production of original copy of the bye- laws bearing any mark of approval of the Board of Directors. The bye-laws of the company can be proved from other evidence.

R.K. Dalmia Vs The Delhi Administration.
A.I.R. 1962 S.C. 1821: 1962 (2) Cri. L.J. 805

(iii) The court shall not rely on confession when from the evidence and circumstances in a particular case it may appear to the court that there was a threat, inducement or promise, though the said fact is not strictly proved.

Pyare Lal Vs the State of Rajasthan.
A.I.R. 1963 S.C. 1094: 1963 (2) Cri. L.J. 178

(iv) Sanction could be proved either from the evidence of the Governor, who is aggrieved and intends to lodge complaint, or from any writing emanating from the Governor.

Goür Chandra Rout Vs The Public Prosecutor Cuttack.
A.I.R. 1963 S.C. 1198 : 1963 (2) Cri. L J. 194

(v) The Legislature has made the certificate of the examination under section 129 A Sub section (1) and (2) of the Bombay Prohibition Act admissible without formal proof but by sub section (8) of S. 129-A of Bombay Pohibition Act the other method of collection of evidence for proving that a person accused has consumed an intoxicant is not precluded and a report of any registered medical practitioner is also admissible u/s 129 B of Prohibition Act.

Ukha Kolhe Vs The State of Maharashtra
A.I.R. 1963 S.C. 1531· 1963(2) Cri L J. 418

(Proof-contd)

(vi) Sub Section (3) of Section 5 of Prevention of Corruption Act provides as an additional mode of proving the extent of the pecuniary resources of property in the possession of the accused

Sajjan Singh Vs State of Punjab
A.I R. 1964. S.C. 464: 1964. (1) Cri. L.J 310

(vii) Whether the accused was insane at the time of committing offence as to be entitled to the benefit of Section 84 of the Penal Code can only be established from the circumstances which proceeded, attended and followed the crime.

Dahyabhai Chhaganbhai Vs The State of Gujarat
A.I R. 1964 S C. 1563: 1964 (2) Cri. L.J. 472

(viii) A writing may be proved to be in the handwriting of a particular individual by the evidence of a person familiar with the handwriting of that individual or by the testimony of an expert competent to the comparison of handwritings on a scientific basis. A third method (S.73) is comparison by the Court with writing made in the presence of the Court or admitted or proved to be the writing of the person.

Where an expert's opinion is given, the Court must see for itself and with the assistance of the expert come to its own conclusion whether it can safely be held that the two writings are by the same person. This is not to say that the Court must play the role of an expert but to say that the Court may accept the fact proved only when it has satisfied itself on its own observation that it is safe to accept the opinion whether of the expert or other witness.'

Note: The expert's evidence after comparing the writing by their Lordship's themselves was admitted.

Fakhruddin Versus The State of Madhya Pradesh
A.I.R. 1967. S C. : 1326 (Sept. Part). 1967 Cri. L,J. 1197

Property

(i) The magistrate cannot exercise his powers under the criminal procedure code in connection with property seized under sub Section (3) of Section 19 of the Foreign Exchange Regulation Act. The Magistrate has no jurisdiction over the articles seized in execution of the search warrant issued under S. 19 (3) of the Act and he cannot permit the retention of such documents by the Director of Enforcement after the expiry of the period he is entitled to keep them in accordance with the provisions of S. 19-A.

Nilratan Sircar Vs. Lakshmi Narayan Ram Niwas
A.I.R. 1965 S.C.1 : 1965 (1) Cri. L.J. 100

(ii) An admission card to sit for the M. A. examination of a University is a property within the meaning of section 420 of Penal Code.

Abhayanand Mishra Vs. State of Bihar
A.I.R. 1961 S.C 1698 : 1961 (2) Cri. L.J. 822

(iii) There is no good reason to restrict the meaning of the word property to movable property only when it is used without any qualification in section 405 or in any other section of the PENAL CODE. The expression 'funds' in the charge was used in the first sense meaning thereby that the accused had dominion over the amount in as much as he could draw cheques on that account. The funds referred in the charge did amount to property within the meaning of the term in section 405 I. P. C.

R.K. Dalmia Vs. The Delhi Administration
A.I.R. 1962 S. C. 1821 : 1962 (2) Cri. L.J. 805

Prosecution

(i) It is the duty of the prosecution to prove the prisoner's guilt subject to any statutory exception.

Nisar Ali Vs. The State of Uttar Pradesh.
A.I.R. 1957 S. C. 366 : 1957 (1) Cri. L.J. 550

(ii) The court cannot normally compel the prosecution to examine a witness which it does not choose to, and the duty of a fair prosecutor extends only to examine such of the witnesses who are necessary for the purpose of unfolding the prosecution story in its essentials,

Sardul Singh Vs. The State of Bombay
A.I.R. 1957 S.C. 747 : 1957 Cri. L.J.1325

iii) The Chief Customs Officer or any other officer lower in rank than him, in the Customs department, is not a "court", and that the offence punishable under item 81 of the schedule to S. 167 cannot be taken cognizence of by any court, except upon a complaint in writing, made, as prescribed in that section.

Thomas Dana Vs State of Punjab
A.I R. 1959 S.C. 375 : 1959 Cri. L.J. 392

(iv) What the prosecution has to prove is that the accused person has received "gratification" other than legal remunerntion" and that when it is shown that he has received a certain sum of money which was not a legal remuneration, then the condition prescribed by S. 4 (1) of the Prevention of Corruption Act is satisfied.

Dhanvantra Balwantrai Vs. State of Maharashtra
A.I.R. 1964 S.C. 575 : 1964 (1) Cri L. J. 437

(v) It is no doubt very important that as a general rule, all Crown witnesses should be called to testify at the hearing of a prosecution, but important as it is, there is no obligation compelling counsel for the prosecution to call all witnesses who speak to facts which the Crown desires to prove. Ultimately it is a matter for the discretion of counsel for the prosecution and though a court ought and no doubt will, take into consideration the absence of witnesses whose testimony would be expected, it must adjudge the evidence as a whole

(Prosecution-contd)

and arrive at its conclusion accordingly taking into consideration the persu-suasiveness of the testiomony given in light of such criticism as may be levelled at the absence of possible witnesses.

Note:—Non production of Prosecution witnesses those who were not material did not prove fatal to the prosecution case.

Abdul Gani Vs State of Madhya Pradesh
A.I.R. 1954 S.C. 31 . 1954 Cri. L J. 323

(vi) The non-production of Sucha Singh who is stated in the dying declaration and in the statement of Narvel Singh P.W. 22 to have witnesses the occurance was commented upon by counsel as a very serious omission. The Public prosecutor stated at the trial that he was giving up Sucha Singh as he had been won over. Therefore, if produced, Sucha Singh would have been no better than a suborned witness.

He was not a witness "essential to the unfolding of the narrative on which the prosecution was based" and if examined the result would have been confusion because the prosecution would have automatically proceeded to discredit him by cross-examination. No oblique reason for his non-production was alleged, least of all proved. There was therefore, no obligation on the part of the prosecution to examine this witness.

Note:—Non-production of such a witness under these circumstances is not fatal.

Bakhshish Singh Vs The State of Punjab
A,I.R. 1957 S.C. 904

(vii) A mere consideration that witness might have given a further description of how things happened would not justifiy the conclusion that the omission to examine them was an oblique motive and goes to benefit of the accused.

R.K. Dalmia Vs Delhi Administration.
A.I.R. 1962 S.C. 1821 : 1962(2) Cri.L.J.805

Prospective

The cardinal principle is that statutes must always be interpreted prospectively, unless the language of the statutes makes them retrospective either expressly or by necessary implication. Penal statutes which create new offences are always prospective, but penal statutes which create disabilities, though ordinarily interpreted prospectively, are, some times interpreted prospectively when there is a clear intendment that they are to be applied to past events Another principle which also applies is that an Act designed to protect the public against acts of a harmful charcter may be construed retrospectively, if the language admits such an interpretation, even thought may equally have a prospective meaning. S.57of the **Bombay Police Act**, 1951, does not create

(*Prospective-contd*)

a new offence nor makes punishable that which was not an offence. So the statute cannot be said to **be applied retrospctively**. The Act in question was thus not applied retrospectively but prospectively.

The State of Bombay Vs Vishnu Ram Chandra
A.I.R. 961 S.C. 307 : 1961 (1) Cri. L. J. 450

(i) It is clear that unless the act complained of appears to have been done or intended to be done under the provisions of the police Act or of the other laws, conferring powers on the police, the protection of section 53 of Madra District Police Act will not be availables.

The State of Andhra Pradesh Vs. N. Venugopal
A.I.R. 1964 S,C, 33 : 1964 (1) Cri, L.J,16

(ii) Section 117 of Factories Act is not limited to officers but includes all other persons.

State of GujaratVs. Kansara Manilal
A.I.R. 1964 S.C. 1893· 1964(2) Cri. L.J. 90

Proviso

(i) It is fundamental rule of construction that a provision must be considered in relation to the principal matter to which it stands as a proviso. Proviso to Section 8 of Jammu and Kashmir Detention Act is to be construed as implying that the time for making the declaration should be co-terminous with time fixed for communicating the grounds under Sub-s (1). The authority vested in the Government to make a declaration contemplated by the proviso must be exercised before the expiry of the span of time predicated by the expression 'as soon as may by' occurring in sub-s. (1). Such a construction will ensure harmonious operation of Ss. 8, 10, and 14 of the Act.

Note : Petition on this basis was allowed.

Abdul Jabar Butt Vs. The State of Jammu and Kashmir
A.I R. 1957 S.C. 281 : 1957 Cri. L.J. 404

(ii) The proviso to section 162 Cr. P. C. only enables the accused to make use of such statement to contradict a witness in the manner provided by section 145 of the Evidence Act. The word "Cross-examination" in the last line of the first proviso to S· 162 of the Code of Criminal Procedure cannot be understood to mean the entire gamut to cross-examination without reference to the limited scope of the proviso, but should be confined only to the cross-examination by contradiction allowed by the said proviso.

Tahsildar Singh Vs State of U. P.
A.I.R. 1959 S C. 1012· 1959 Cri. L.J. 1231

(iii) A sincere attempt should be made to reconcile the enacting clause and the proviso and to avoid repugnancy between the two.

Tahsildar Singh Vs. State of U. P.
A.I.R. 1959 S.C. 1012. 1959 Cri. L.J. 1231

(*Proviso-contd*)

(iv) Proviso to section 4(1) of West Bengal Criminal law Amendment Act does not prohibit trial and conviction of accused for different offences, if permitted by Cr Pc and other Provisions of the Act.

Sunil Kumar Paul Vs The State of West Bengal-
A.I.R. 1965 S.C. 706: 1965 (1) Cri. L.J. 630

(v) To say 2nd proviso of section 8(1) of Notification dated 8.11.1962 in Foreign Exchange Regulation Act refers only to what is handed over to the ship or aircraft for carriage would make the provision practically futile and unmeaning. If all the goods or articles retained by a passenser in his own custody or carried by him on his person were outside the 2nd proviso, and the provision were attracted only to cases where the article was handed over to the custody of the carrier, it would have no value at all as a condition of exemption. It was therefore, "cargo" which had to be manifested and its value must have been inserted in the air consignment note.
The word 'cargo' when it occurs in the Second Proviso, includes Personal luggage e.g Gold bars carriedon Person by Passanger is corgo.

State of Maharashtra Vs Mayer Hans George.
A.I.R. 1965 S.C. 722 : 1965 (I) Cri. L,J. 641

Provocation

The mere fact that before the shooting the accused abused the deceased and the abuse provoked an equally abusive reply could not conceivably be a provocation for the murder.

K.M. Nanavati Vs State of Maharashtra
A.I,R. 1962 S.C. 605 : 1962 (1) Cri. L.J. 521

Note ;—See 'Grave and Sudden Provacation' at Page 216.

Public Interest

Both the obligation to furnish particulars and the duty to consider whether the disclosure of any facts involved there in, is against public interest, are vested in the detaining authority and not in any other.

Lawrence Joachim Joseph D'souza Vs The State of Bombay
A.I R. 1956 S.C. 531 : 1956 Cri L.J. 935

Public Order

The statements denouncing the agreement 'Nehru Noon Pact' between the two Prime Ministers and stressing the need for forming a militia with the youths of the country, cannot be said to have no repercussions on the maintenance of the public order. Any instigation against the personal safety of the Prime Minister of India cannot but have a deletarious effect on the main tenance of Public Order.

Naresh Chandra Vs The State af West Bengal
A.I.R. 1959 S. C. 1335 : 1959 Cri. L J. 1501

Public Position

Whoever fills a public position must accept an attack as necessary, though unpleasant, appendage to his office. Public men in such positions may as well think it worth their while to ignore such vulgar criticisms and abuses hurled against them rather than give an importance to the same by prosecuting the persons responsible for the same. While commending this the conduct of the Transport Minister and the Chief Minister of the Punjab Government cannot help observing that the step which the state authorities took against the appellants in prosecuting them under section 9 of the Punjab Security of States Act was unjustified as the slogans uttered by the appellants did not under the circumstances set out above fall within the mischief of that section.

Note:—Conviction of the appellant was set-aside.

Note:2.—Petitioner in this case raised the slogans "Jaggu Mama Hai Hai" against the Transport minister for nationalising the Transport.

Kartar Singh Vs The State of Punjab
A.I.R. 1956 S.C. 541 : 1956 Cri. L J. 945

Public Prosecutor

(i) Opinion of Public Prosecutor in the course of investigation is not relevant and should not be placed on the record.

Suraj Pal Vs State of Uttar Pradesh
A.I.R. 1955 S.C. 419 : 1955 Cri. L.J. 1004

(ii) It is only the Public Prosecutor, who is in charge of a particular case and is actually conducting the prosecution, he can file an application under that section, seeking permission to withdraw from the prosecution. If a public Prosecutor is not in charge of a particular case and is not conducting the prosecution, he will not be entitled to ask for withdrawl from the prosecution, under S. 494 of the Code.

Further:—Where the prosecution is being conducted by the complainant, Viz., the first respondent., The Public prosecutor is not entitled to file an application for withdrawal.

(This question of Public Prosecutor powers arose in respect of a complaint, filed by a Private person and which was beingprosecuted by him as such).

Note—See also 'withdrawl'.

State of Punjab Vs Surjit Singh and another.
A.I.R. 1967 S.C. 1214 : 1967 Cri. L.J. 1084

Public Safety

(i) In the charge u/s9 of Punjab Security of the State Act the prosecution has not only to prove that what the accused did is against decency and is defamatory of these indivi duals but also is such that it undermines public Order, decency or

(*Public Safety*)

morality and is tantamount to an incitement to an offence, prejudicial to the maintenance of the public order.

Kartar Singh Vs The State of Punjab
A.I.R. 1956 S.C. 541 : 1956 Cri. L.J. 945

(ii) Where power is vested in a statutory authority to deprive the liberty of a subject on its subjective satisfaction with reference to specified matters, if that satisfaction is stated to be based on a number of grounds or for a variety of reasons, all taken together, and if some out of them are found to be non existent or irrelevant, the very exercise of that power is bad.

Dwarka Das Vs The State of Jammu & Kashmir
A.I.R. 1957 S.C.164 : 1957 Cri. L.J. 316

(iii) Bringing of the Government of India and the Government of the State of Jammu and Kashmir into hatred and contempt does involve the security of India.

Jagan Nath Vs The Union of India.
A.I.R. 1960 S.C. 625 : 1960 Cri L.J. 764

(iv) It would not be open to the detenu to ask the court to consider the question as to whether the said satisfaction of the detaining authority can be justified by the application of objective test.

A.I.R. 1964 S.C. 335.

Public Servant

(i) There is nothing in the terms of Section 161 I.P.C. requiring that the public servant contemplated therein must be a specified public servant.

Note:—The objection non-mentioning the name of person who was intended to be influenced by the appellant, in the charge was found without substance.

Mahesh Prasad Vs State of Uttar Pradesh
A.I.R. 1955 S.C. 70 : 1955 Cri.L.J. 249

(ii) All railway servants are public servants, for the purposes of the Prevention of corruption Act.

Ram Krishan Vs The State of Delhi.
A.I.R. 1956 S C. 476 : 1956 Cri. L. J. 837

(iii) The accused is person employed as chaser in Railway carriage workshop and is working under works Manager and the Duties which he performs are immediately **auxiliary** to those of the work manager who is a public servant. So the accused is a public servant and he falls within the definition of public Servant U/s 2 of Prevention of Corruption Act,

Shamrao Vishnu Parulekar Vs The District Magistrate Thana
A.I.R. 1957 S.C. 23 : 1957 Cri. L.J. 1

(Public Servant-contd)

(iv) Teacher who is in the service of the Government and is being paid by the Government is a public servant within the meaning of the Ninth clause of S.21 of the Indian Penal Code.

The State of Ajmer Vs Shiriji Lal
A.I.R. 1959 S.C. 847 : 1959 Cri. L J. 1127

(v) Person employed by a railway owned and managed by the Government of India is a public servant within the meaning of Section 21 of the Penal Code.

P. R. Chowdhary Vs The State of Uttar Pradesh
A.I.R. 1959 S.C. 1310 : 1959 Cri. L.J. 1497

(vi) Where a public servent commits the offence of cheating or abets another so to cheat, the offence committed by him is not one while he is acting or purporting to act in the discharge of his official duty, as such offence has not necessary connection between it and the performance of the public servant, the official status furnishing only the occasion or opportunity for the commission of the offence, so sanction U/s 197 Cr.P.C. is not required under such circumstances for prosecuting the Public Servant.

K. Satwant Singh Vs The State of Punjab
A.I.R. 1960 S.C. 266 : 1960 Cri L.J. 410

(vii) Police Officer searching the person of the complainant and found currency note. The complainant on handing over the bundle of notes to the police officer must have done so in the confidence that would get back from him when the suspicion was cleared. As the currency notes were taken by the Sub-Inspector in the discharge of his duty so he has committed the offence of misappropriation i e. 409 IPC.

State of Uttar Pradesh Vs Babu Ram
A.I.R. 1961 S.C. 751 : 1961(1) Cri. L.J. 773

(viii) Chairman of managing committee of Municipality is a public servant.

Maharudrappa Danappa Vs State of Mysore
A.I.R. 1961 S.C. 785 : 1961(1) Cri. L J. 857

(ix) The case of a public servant whose services **are loaned by one government to the other** does not fall either under clause (a) or under clause(b) but it falls under clause(c) of section 6 of Prevention of Corruption Act. The authority to remove such public servant from office would not be the borrowing government but the loaning government.

R.R. Chari Vs The State of Uttar Pradesh
A.I.R. 1962 S.C. 1573 : 1962 (2) Cri. L.J. 510

(x) Persons appointed as investigator under section 33 of the Insurance Act is

not public servant. Statement made to such persons is not barred U/s 24 of Evidence Act.

R.K. Dalmia Vs The Delhi Administration
A.I.R. 1962 S.C. 1821 : 1962 (2) Cri. L.J. 805

(xi) Public Servant causing wrongful loss to Government by benefiting third party also commits an offence U/s 5(1) of the prevention of corruption Act.

M. Narayanan Nambiar Vs State of Kerala
A.I.R. 1063 S.C. 1116 : 1963(2) Cri. L.J. 186

(xii) Servant of Road Transport is not a public servant.

The State of Maharashtra Vs Jagatsing Charansing
A.I R. 1964 S.C. 492 : 1964(1) Cri L.J. 432

(xiii) Where the accused presents a false bill purporting to present it in the discharge of his duties as a clerk of the office of the Divisional Health Officer who was duly authorized to present bills and cash them and the bank pays him the cash as messanger of that office duly authorised to receive payment in cash, it follows that the offence under section 420 I.P.C. committed by the accused would be committed by him as a public servant purporting to act as such within the meaning of the expression in the shedule of West Bengal Criminal Law Amendment Act.

Sunil Kumar Vs The State of West Bengal.
A.I R. 1965 S.C. 706 : 1965 (1) Cri. L. J. 630

(xiv) Section 198-B is exception to provisions of Section 198 and a public prosecutor can, with the previous sanction of the Government concerned, file a complaint in writing in the court of Session directly with respect to an offence U/s 500 I.P C committed against a public servant in respect of his conduct in the discharge of his public function.

Anwar Hussain Vs Ajoy Kumar Mukherjee
A.I.R. 1965 S.C. 1451 : 1965 Cri. L.J. 434

(xv) "It is not every offence committed by a public servant that requires sanction for prosecution under Section 197 (1) of the Criminal Procedure Code; nor even every act done by him while he is actually engaged in the performance of his official duties : but if the act complained of is **directly concerned with his official duties** so that, if questioned it could be claimed to have been done by virtue of the office, **then sanction would be necessary.** It is the qual ty of the act that is important and if it falls within the scope and range of his official duties the protection contemplated by Section 197 of the Criminal Procedure Code will be attracted. An offence may be entirely unconnected with the official duty as such or it may be committed within the scope

of the official duty. Where it is unconnected with the official duty there can be no protection. It is only when it is either within the scope of the official duty or in excess of it that the protection is claimable".

Where the act of Criminal mis-appropriation is not committed while the accused is acting or purporting to act in the discharge of his official duty as a Public Servant and his official status **only furnishes the accused an occasion or an opportunity of committing the offence,** the sanction of the State Government is not necessary.

Baij Nath Vs State of Madhya Pradesh
A.I.R. 1966 S.C. 220 : 1966 Cri. L.J. 189

(xvi) If once the Central Government has delegated its power to another authority with regard to appointment and removal of a public servant, then for the purpose of S. 197, Criminal Procedure Code the public servant concerned will not be treated to be a public servant "not removable from his office execpt by or with the sanction of the Central Government" within the meaning of that section.

On the material date the appellant was officiating in the senior scale as Class I Officer in the Transportation (Traffic and Commercial) Department of the Western Railway. It is also not in dispute the appellant was holding a substantive post as Class II officer, though he was officiating as Class I Officer on March 14-1961. The question to be considered is whether on the material date, the appellant was not removable from his office save by the removable sanction of Central Government within the meanlng of S. 197 of the Criminal Procedure Code.

The Railway Board is a separate body which derives its powers and authority, however, wide they may be only because of delegation of powers from the Central Government in respect of the administration of the Railways. The result, therefore, is that the appellant was appointed in an officiating position as Class I officer by the Railway Board and, therefore, he was removable by the Railway Board and not by the Central Government.

K.N. Shukla Vs Navnit Lal Mani Lal Bhatt
A.I.R. 1967 S.C. 1331 : 1967 Cri. L.J. 1200

Public Service

It is not necessary for an accused person under clause (d) of Section 5(1), of Prevention of Corruption Act while misconducting himself, should have done so in the discharge of duty and thereby obtain any valuable thing or pecuniary advantage. If a public servant takes money from third party by

Public Serves-contd)

corrupt some other public servant he commits offence U/s 5(1) (d) read with 5(2) of the Prevention of Corruption Act.

Dhaneshwar Narain Vs The Delhi Administration
A.I.R. 1962 S.C. 195 : 1962(1) Cri. L.J. 203

Public Worker

The appellant was at the relevant time the State Secretary of the Punjab Praja Socialist Party. He is a public worker and belongs to an active political party. He has stated that there was no animus in his mind against the complainnant and his father, and that is not seriously disputed. Malice in that sense must, therefore, be eliminated in dealing with the appellants plea. It is quite true that even if the appellant was not actuated by malice, it would not be possible to sustain his plea of good faith merely because he made the impugned statement as a public worker and he can claim that he was not acctuated by personal malice against the complainant. Absence of personal malice may be relevant fact in dealing with the appellant's plea of good faith, but its significance or importance cannot be exaggerated. Even in the absence of personal malice, the appellant will have to show that he acted with due care and attention.

Harbhajan Singh Vs State of Punjab
A.I.R. 1966 S.C. 97 : 1966 Cri. L.J. 82

Punishment

(i) The minor offence of serving an offender U/s 201 I.P.C. cannot be punishable more than the main offence.

Note:—In this case the main offence was U/s 330 of which the accused were acquitted but were convicted U/s 201 I.P.C. and were sentenced to three years. The sentence was reduced to the 1/4th of the sentence provided for the main offence i.e. 330 I.P.C.

Roshan Lal Vs The State of Panjab
A.I.R. 1965 S.C. 1413 : 1965 (2) Cri. L.J. 426

(ii) Normally no court should award two seprate punishments for the same act constituting offences under section 201 I.P.C.

Roshan Lal Vs The State of Panjab
A.I.R. 1965 S.C. 1413 : 1965 Cri. L.J. 426

(iii) Considering that seven lives have been lost on account of the nagligence of the appellant in this connection, the sentence of six months rigorous imprisonment, which is the maximum provided U/s 285 I.P.C., cannot be said to be harsh.

Ajaib Singh Vs. Gurbachan Singh
A.I.R. 1965 S.C. 1619

(*Punishment-contd*)

(iv) When the Customs Authorities confiscated the gold in question neither the proceedings taken before the sea Customs Authorities constituted a prosection of the appellant nor did the order of confiscation constitute a punishment inflicted by Court of judicial tribunal on the appellant. The appellant could not be said by reason of these proceedings before the Sea Customs Authorities to have been "prosecuted and punished" for the same offence with which he was charged before the Chief Presidency Magistrate, Bombay in the complaint, filed against him under S. 23,iForeigin Exchange Regulation, Act, 1947.

Maqbool Houssan Vs State of Bombay
A.I.R. 1953 S.C. 325 : 1953 Cri. L.J. 1432

(v) It is not strange if the act intended to impose a heavier punishment for a second offence, which might be of a trivial nature, while the first offence, which might have been of a serious nature, entitled a lighter punishment.

Note.—This contention of the defence was declared fallacious and the appeal was rejected.

Jagdish Prasad Vs State of Uttar Pradesh
A.I.R. 1966 S.C. 290 : 1966 Cri. L.J. 194

(vi) Thd Sentence was reduced to already gone in view of the old age.
A.I.R. 1964 S.C. 986 : 1964 (2) Cri. L.J. 57

(vii) The word 'Punished' and 'Punishable' cannote the same meaning and the word punished does not give discretion to the Magistrate to pass a sentence of fine instead of imprisonment.

State of Maharashtra Vs Jugmanderlal
A I.R. 1966 S.C. 940 : 1966 Cri. L J. 707

(viii) **Note:**—See 'Sentence' also.

"Q"

Question of Fact

(i) Supreme Court in a criminal appeal would not enquire into the questions of fact yet where three persons have been sentenced to death on the opinion of the third judge, the Supreme Court deemed it advisable to examine the evidence.

Note:—Sentence of death was reduced to that of transportation mainly because there was difference of opinion in the High Court.

Pandurang Vs. State of Hyderabad
A.I.R. 1955 S.C. 216. : 1955 Cri. L.J. 572

(ii) The existence of a common intention said to have been shared by the accused person is, a question of fact. The inference of fact drawn by the Session Judge, from the facts and circumstances appearing on the record of a case and which is accepted by the High Court cannot be said to be improper or that those facts and circumstances are capable of any innocent explanation, the Supreme Court will not hold, on the facts and circumstances of such a case, that there is any misapplication of S. 34, Penal Code as it is a question of fact.

Rishideo Pande Vs State of Uttar Pradesh
A.I.R. 1955 S.C. 331 : 1955 Cri. L.J. 873

(iii) Whether a particular injury is fatal or non fatal is a question of fact.

Narayanan Nair Vs The State of Travancore cochin
A.I.R. 1956 S.C. 99 ; 1956 Cri, L.J. 278

(iv) Question of prejudice is one of fact.

Willie Vs State of Madhya Pradesh
A.I.R. 1956 S.C. 116 : 1956 Cri. L.J. 291

(v) It is obvious that the intention of the Constitution in providing for an appeal on facts under Art. 134 (1) (a) and (b) was to exclude it under Article 136 of the Constitution and it strongly supports the conclusion reached in AIR

(Question of Fact-contd)

1950 S.C. 169 that like the Privy Council **this Court would not function as further court of appeal on facts in criminal cases.**

Aher Raja Khima Vs State of Saurashtra
A.I.R. 1956 S.C. 217 : 1956 Cri. L.J. 426

(vi) Each case has its own peculiar facts and it is therefore, always risky to appeal to precedents on question of fact.

Gurcharan Singh Vs State of Panjab
A.I.R. 1956 S.C. 460 :1956 Cri. L.J. 827

(vii) It is well settled practice of the Supreme Court that except where there has been an illegality, or an irregularity of procedure or a violation of the principles of natural justice, resulting in an absence of fair trial or a gross miscarriage of justice, the Supreme Court does not permit a third review of evidence with regard to question of fact in cases in which two courts of fact have appreciated and assessed the evidence with regard to such questions.

Note:—Whether the witness could see the occurrence or not is a question of fact. It cannot be raised in the Supreme Court.

Chikkarange Vs State of Mysore
A.I.R. 1956 S C. 731 :1956 Cri. L.J 1365

(viiii) The High Court has no jurisdiction to grant a certificate under Article 134 (1) (C) of the Constitution in a case where questian of fact is involved but the Supreme Court Under Article 136 possess the power to interfere in a case involving a question of fact

Sardul Singh Kaveeshar Vs State of Bombay
A.I.R. 1957 S.C. 747 : 1957 Cri. L.J. 1325

(xi) Though in an appeal by special leave, Supreme Court is bound by the finding of fact arrived at by the High Court, yet where the High Court has not dealt with the appeal as it should have, the Supreme Court will proceed to re-hear the appeal on evidence.

Note:—After careful scrutiny of the **evidence** on record the conviction of the appellant was set aside U/s 302 IPC but appellants were convicted under S. 304 (Part 1) IPC and sentenced each for ten years,

Jumman Vs The State Panjab
A.I.R. 1957 S.C. 469 : 1957 Cri .L.J 586

(x) Question of intention is a question of fact.

Talab Haji Hussain Vs Madhukar Purshottam Mondkar
A.I.R. 1958 S.C. 376 : 1958 Cri. L.J. 701

(xi) It is not unusual for a witness to make mistake of identity when a large number of persons are concerned in committing a crime. So it is a question of fact and not of law.

Bharwad Mepa Vs The State of Bombay
A.I R. 1960 S C. 289 : 1960 Cri L.J. 424

(*Question of Fact-contd*)

(xii) Article 136 does not confer right of appeal on party but it confers a discretionary powers however on the Supreme Court. So Supreme Court will not interfere on question of fact except in exceptional cases.

The State of Bombay Vs Rusy Mistry
A I.R. 1960 S C 391 · 1960 Cri. L.J 532

(xiii) The Supreme Court will not interfere on question of fact, particularly when there are concurrent findings by the lower Court

Note:—Question of appreciating, the evidence and the circumstances properly was not allowed to be raised.

Shri Ram Vs State of Maharashtra
A.I R. 1961 S C 674 · 1961 (1) Cri L.J 760

(xiv) Whether a reasonable man in the circumstances of a particular case committed the offence under provocation which was grave and sudden is a question of fact for the Jury to decide.

K.M. Nanavati Vs State of Maharashtra
A I.R. 1962 S.C. 605 1962 (1) Cri. L-J. 521

(xv) The question whether investigation had commenced or not is a question of fact and it does not depend upon any irregularity committed in a matter of recording the first information report by the concerned police officer.

K.M. Nanavati Vs State of Maharashtra
A I.R. 1962 S C. 605 : 1962 (1) Cri. L.J. 521

(xiv) A plea that the sanction has not been accorded by the authority concerned after going through all the relevant fact and provision, is not a pure question of law It cannot be allowed to be raised for the first time in Supreme Court.

Tulsi Ram Vs State of Uttar Pradesh
A.I R. 1963 S.C. 666 : 1963 (I) Cri L J. 623

(xvii) Evidence with regard to the fact of seizure is a question of fact. The Supreme Court in appeal under Article 136 of the Constitution would not re-examine the evidence

Note:—In this case question of possession which is also a question of fact, was considered and on that basis appeal was accepted.

Radha Kishan Vs State of Uttar Pradesh
A.I R. 1963 S.C. 822 · 1963 (1) Cri. LJ 809

(xviii) Whether a statement appears to be a threat or not is a question of fact.

Pyare Lal Vs The State of Rajasthan.
A I.R. 1963 S.C. 1094 · 1963 (2) Cri. L.J. 178

(Question of Fact-contd)

(xix) Where the High Court looked for corroboration of a retracted confession and found the same, the finding is one of fact

Pyare Lal Vs The State of Rajasthan
A.I.R. 1963 S.C. 1094 : 1963 (2) Cri. L.J. 178

(xx) Whether presumption raised under the Prevention of Corruption Act stands rebutted is a question of fact and the Supreme Court will be slow to interfere. No doubt it will be open to Supreme Court to examine the evidence for itself where the High Court has proceeded upon an erroneous view as to the nature of the presumption or where the assessment of fact made by the High Court is manifestly erroneous.

Dhanvantrai Balwantrai Vs State of Maharashtra
A.I.R. 1964 S.C. 575 : 1964 (2) Crl. L.J.J 437

(xxi) Question of Participation of individual accused in the unlawful assembly is a question of fact.

Smtt. Mathri Vs The State of Panjab
A.I.R. 1964 S.C. 986 : 1964 (2) Cri. L.J. 57

Question of Law

Under Art 145 (3) of the Constitution only a case involving a substantial question of law as to the intention of the constitution shall be heard by a Bench comprising not less than five judges. Where the point has already been decided by the Supreme Court in earlier precedents, the point does not involve substantial question of law as to the interpretation of the Contitution with in meaning of Art. 145(3).

Bhagwan Swarup Vs State of Maharashtra
A.I.R. 1965 S.C. 682 : 1965 (1) Cri. L.J.608

"R"

Radio Set

A Radio Set receiving Communication is a telegraph within the meaning of section 3 (1) of Telegraph Act, for a radio set receives communication by means of electricity under the first Proviso to S.4 of the Telegraph Act. The Central Government may grant a licence to a person for establishing, maintaining and working a telegraph or in respect of any of them : and if a person either establishes, maintains or works a telegraph without a licence or in contravention of the terms of licence, he would be commitiing an offence under S. 20 of the Act.

Note —Using of radio amounts to working on radio. So using it without licence is an offence U/s 20 of the Act.

State of Bihar Vs Mangal Sao
A.I.R. 1963 S.C. 445 : 1963 (1) Cri. L.J. 338

Raiding party

(i) The evidence of the witnesses who were with the raiding party, must be treated as the evidence of accomplice and needs corroboration.

Rao Shiv Bahadur Singh Vs State of Vindh P.
A.I R. 1954 S.C. 322 : 1954 Cri LJ 910

(ii) It is wrong to think that the evidence of the witnesses of the raiding party must be discarded in the absence of any independent corroboration. The correct rule is this if any of the witnesses are accomplices who are particeps crimins in respect of the actual crime charged, their evidence must be treated as the evidence of accomplices is treated if they are not accomplices but are partisan or interested witnesses, who are concerned in the success of the trap, their evidence must be tested in the same way as other interested evidence is tested by the application of diverse consideration which must vary from case to case, and in a proper case, the Court may even look for independent corroboration before convicting the accused person. If a Magistrate puts himself in the position of a partisan or interested witness, he cannot claim any higher status and must be treated as any other interested witness. The evidence of the two search witnesses does not provide independent corroboration, in a material

(Rading Party-contd)

particular to the testimony of the raiding party. The crumpled note, one of the series testified to by the raiding party, could not come of itself to the verandah; it could be found where it was actually found only if the testimony of the raiding party was true The learned Judge said that the search witnesses came later and did not see the actual transaction, that is, the giving and taking of the bribe That is correct but independent corroboration does not mean that every detail of what the witnesses of the raiding party have said must be corroborated by independent witnesses. Corroboration need not be direct evidence that the accused committed the crime: it is sufficient even though it is merely circumstantial evidence of his connection with the crime.

Note:—Appeal against the Judgement of acquittal was accepted. Accused was convicted U/s 161 Penal Code for one year R I

Note II.—A I.R 1954 S C. 322. does not lay down any inflexible rule of corroboration of raiding party.

The State of Bihar Vs Basawan Singh
A.I.R. 1958 S.C. 500 : 1958 Cri L J. 976

Railway Act

(i) What Section 137(4) of the Railway Act provides is that if a railway servant is charged for an offence under the Penal Code and the said offence is outside Chapter IX of that Code he cannot be treated as public servant.

P.R. Chowdhary Vs The State of Uttar Pradesh
A.I.R 1959 S.C. 1310 : 1959 Cri. L.J. 1497

(ii) If once the Central Government has delegated its power to another authority with regard to appointment and removal of a public servant, then for the purpose of S. 197, Criminal Procedure Code the public servant cocerned will not be treated to be a public servant "not removable from his office except by or with the sanction of the Central Government" within the meaning of that section

On the material date the appellant was officiating in the senior scale as Class I Officer in the Transportation (Traffic and Commercial) Department of the Western Railway It is also not in dispute that the appellant was holding a substantive post as Class II Officer, though he was officiating as Class I Officer on March 14, 1961 The question to be considered is whether on the material date, the appellant was not removable from his office save by the sanction of Central Government within the meaning of S. 197 of the Criminal Procedure Code.

The Railway Board is a separate body which derives its powers and authority, however wide they may be, only because of delegation of powers from the Central Government in respect of the administration of the Railways.

The result, therefore, is that the appellant was appointed in an officiating position as Class I Officer by the Railway Board and, therefore, he was removable by the Railway Board and not by the Central Government.

K.N. Shukla Vs Navnit Lal Mani Lal Bhatt.
A.I.R. 1967 S.C 1331 (September Part). 1967 Cri L J. 1200

Rash Act

(i) The fact that merely because Shiban Singh one of the accused was carrying a loaded gun was not enough to show that he was doing a rash act.

Shibraj Singh Vs The State of West Bengal
A.I R. 1959 S.C 1173 · 1959 Cri. L J. 1488

Rash and Negligent Act

(i) The accused was over anxious to show all hospitality to the deceased Mahant and was anxious that the deceased Mahant should not go away from his house without taking meals and spending the night with him and on seeing that he was going away, accused let go his gun without aiming it at Mahant so that the Mahant should not go from that place and Mahant died. This act is a rash and negligent act and not murder. So the conviction should be under section 304-A,IPC.

Sadhu Singh Vs The State af Pepsu
A.I.R. 1954 S.C. 271 : 1954 Cri. L.J. 727

(ii) Stramonium and a dhatura leaf are poisonous The appellant was registered as a Homoeopath, and in Homoeopathy a dhatura leaf is never administered as such. It seems that the appellant prescribed the medicine without thoroughly studying what would be the effect of giving 24 drops of stramonium and a leaf of dhatura. It is a rash and negligent act to prescribe poisionous medicines without studying their probable effect.

Note:—Appellant's conviction U/s 302 IPC was set-aside but was convicted U/s 304-IPC and was sentenced to 2 years' R.I.

Juggankhan Vs The State of Madhya Pradesh
A.I.R. 1965 S.C. 831 : 1965 (1)Cri L J 763

It is, no doubt, true that the trespasser enters the property at his own risk and the occupier owes no duty to take any reasonable care for his protection but at the same time the occupier is not entitled to do wilfully acts such as set a trap or set a naked live wire with the deliberate intetion of causing harm to trespassers or in reckless disregard of the presence of the trespassers. As the voltage of the current fed into the wire precludes any contention that it was merely a reasonable precaution for the protection of private property.

(Rashand neglıgent Acı-contd)

Note I—The appellant was charged with an offence under S 304-A of the Indian Penal Code for causıng the death of one Mst. Madilen by contact with an electrically charged naked copper wire which he had fixed up at the back of his house with a view to prevent the entry of intruders into his latrine.

Note —II The appeal was dismissed and conviction U/s 304-A I.P.C. was upheld.

Cherubin Gregory Vs State of Bihar
A.I.R. 1964 S.C. 205 : 1964 (I) Cri. L.J. 138

(iii) Death must be direct result of the rash or negligent act of accused and the act must be efficient cause without intervention of another negligence. It must be the cause causans; it is not enough that it may have been the cause sine qua non.

The mere fact that the fire would not have taken place if the appellant had not allowed burners to be put in the same room in which turpentine and varnish were stored, would not be enough to make him liable U/s 304-A of IPC for the fire would not have taken place, with the result that seven persons were burnt to death, without the **additional** negligence of Hatim another person. The death in this case was, therefore, not direct result of rash or negligent act on the part of the appellant and was not proximate and efficient cause without the intervention of another negligence. The appellant must, be acquitted of the offence U/s 304-A IPC.

Note:—The cause of the fire by which 7 person met death was not merely the presence of the burners within the room in which varnish and turpentine were stored but the direct and proximate cause of the fire was the act of one of the workmen in pouring the turpentine too early.

Note:—Appal was accepted.

Kurban Hussein Mohamdalli Rangawalla Vs State of Maharashtra
A.I.R. 1965 S.C 1616

(iii) The conviction of the appellant No. 2 under S. 201 IPC depends on the sustainability of the conviction of appellant No.1 under S.304-A IPC.

Note:—Offence U/s 304-A IPC was not proved so both the appellants were acquitted.

Suleman Reheman Mulani and another Versus State of Maharashtra
D.L.J. 1968 S.C.No.8 : Criminal Appeal No. 50 of 1965 decided on 1.12.1967

Re-agitation

Contentions 2,4. and part of contention 5 in so for as they concern the original order of detention no longer survive as they were disposed of by the decision in writ P. No 47 of 1966. The petitioner **therefore** cannot be permitted to reagitate the same questions, it **not being his case** that **new circumstances have arisen justifying their reagitattion.**

P.L. Lakhan Pal Versus Union of India
A.I.R. 1967 S.C. 908 : June Part)

Reasons

(i) Where High Court has not given reasons for rejecting the application and exercising the discretion in one way or the other judicially. The discretion cannot be said to be exercised Moreover there are no reasons why, the appellant should have been asked to proceed under the Guardian and Wards Act for recovering the custody of the child. She had of course the right to do so. But she had also a clear right to an order for the custody of the child under S 491 of the Code. The fact that she had a right under the Guardians and Wards Act is no justification for denying her the right under S. 491.

Note:—The Supreme Court interfered and allowed the appeal, and repondents were directed to deliver the Custody of minor to the appellant.

Gohar Begum Vs Suggi alias Nazma-Begum
A.I.R. 1960 S.C.93 : 1960 Cri. L.J 164

(ii) Section 203 of the Code of Criminal Procedure provides that where the Magistrate dismisses a complaint because in his judgment there is no sufficient ground for proceeeding with trial he shall record his reasons for doing so. Where the magistrate has dismissed the complaint without giving reasons as required by 203 Cr P.C. the error goes to the root of matter. As the giving of reasons is a pre-requisite for making on order of dismissal of a complaint and absence of the reasons would make the order a nullity.

Chandra Deo Singh Vs Prakash Chandra Bose
A.I.R. 1963 S.C. 1430 1963 (2) Cri. L.J. 397

(iii) Reasoning of judgment of acquittal is not admissible as evidence. The earlier judgment was admissible only to show the parties and the decision but it was not admissible for the purpose of relying upon the appreciation of evidence. The reasoning in the earlier judgment also cannot be relied upon as it proceeded on evidence which was recorded and considered. separately.

Kharkan Vs State of Uttar Pradesh
A.I.R. 1965 S.C. 83 1965 (1) Cri L.J. 116

Reasonable doubt

Even if the accused was not able to establish conclusively that he was insane at the time he committed the offence, the evidence placed before the court by the accused or by the prosecution may raise a reasonable doubt in the mind of the court as regards one or more of the ingredients of the offence, including mensrea of the accused and in that case the court would be entitled

to acquit the accused on the ground that the general burden of proof resting on the prosecution was not discharged.

Dahyabhai Chhaganbhai Vs State of Gujarat
A.I.R. 1964 S.C. 1563 · 1964 (2) Cri. L.J. 472

Rebuttal

The accused is entitled to rebut the charge, if a certain document would furnish good material for rebutting that case, the court by declining to issue process for the examination of the witnesses connected with those documents would deprive the accused of an opportunity of rebutting. Whatever one may think of the appellants' contention, they cannot be convicted without an opportunity being given to them to present their evidence, and that having been denied to them, there has been no fair trial, and the conviction of the appellants The result may be unfortunate. But it is essential that rules of procedure designed to ensure justice should be scrupulously followed, and Courts should be jealous in seeing that there is no breach of them. The appeals will be allowed and the appellants acquitted.

Ronald Wood mathans Vs State of West Bengal
A.I.R. 1954 S.C. 455 . 1954 Cri. L.J. 1161

Recital

Discharge Certificate, Ex. 4, given by an Agent of the firm by name H.P. Das, where in he acknowledges that possession of the godown was handed over to him in good condition and that he had no further claim in respect thereof against the Government of India. Before the use of this document and the recitals therein against the appellant, **such agency must be satisfactorily proved.**

Kedar Nath Vs The State of West Bengal
A.I.R. 1954 S.C. 660 1954 Cri L J. 1679

Reckoning

The review order under R 30-A (8) of Defenae of India Rules is to be within six months from the date of the initial order of detention which will not be valid after six months if no order for the continued detention is made in accordance with R. 30-A (8). Six months period for review under Defence of India Rules is to be reckoned from the date of initial order of detention and not from the date of confirmation. Review beyond six months ; detention becomes illegal. That the detention of the petitioner under the detention order made by the District Magistrate, Delhi, on February, 25, 1963, became illegal after the expiry of six months from that date as it had not been reviewed by the Administrator within that period as required by sub R (8) of R.30-A.

Note The petition was allowed and the petitioner was set at liberty.

Balmuknd Vs The District Magistrate Delhi
A.I.R. 1965 S.C. 877 : 1965 (2) Cri. L.J 4

Recommendation

Recommendation of High Court to the Government for appointing Director of Prosecution for handling the case was held to be against law and was likely to serve as unwholesome precedent. Such a procedure is sure to cause prejudice to the accused.

K.V. Krishnamurthy Lyer Vs The State of Madras
A.I.R. 1954 S.C. 406 : 1954 Cri. L.J. 1024

Record

(i) The Verdict should not be interferred with or conviction U/s 302 IPC based on it altered on hypothetical consideration not founded on any facts on record.

Ram Lochan Ahir Vs State of West Bengal
A.I.R. 1963 S.C. 1074 : 1963((2) Cri. L.J. 174

(ii) The requirements of S. 243 of the Criminal Procedure Code are mandatory in character and a violation of these provisions vitiates the trial and renders the conviction legally invalid. The requirment of the section is not a mere empty formality but is a matter of substance intended to secure proper administration of justice. It is important that the terms of the section are strictly dependent upon the circumstance whether he pleaded guilty or not and it is for this reason that the legistature requires that the exact words used by the accused in his plea of guilty should, as nearly as possible, be recorded in his own language in order to prevent any mistake or misapprehension.

Note.—Appeal of the accused was allowed.

Mahant Kaushalya Das Vs State of Madras
A.I.R. 1966 S.C. 22 : 1966 Cri. L.J. 66

(iii) The recording of a joint statement of the examination of witnesses by the investigating officer is clearly in contravention of Section 161(3) of CrPc and must be disapproved but that would not make their **testimony** inadmissible.

Tilkeshwar Singh Vs The State of Bihar
A.I.R 1956 S.C. 238 : 1956 Cri. L J. 441

Recording Confession

(iv) It would be reasonable to insist upon giving an accused person at least 24 hours to decide whether or not he should make a confession.

Note:—In this case accused was kept in police custody for 4/5 days and then was produced before the Magistrate for confession. The accused was given only half an hour for making up his mind about confession. Confession was ignored and appeal was allowed.

Sarwan Singh Vs State of Punjab.
A.I.R. 1957 S.C. 637 : 1957 Cri. L.J. 1014

(*Recording Confession-Contd*)

(v) It is hardly necessary to emphasize that the act of recording confessions under S 164, Criminal P.C., is a very solemn act and, in discharging duties under the said section, the Magistrate must take care to see that the requirements of sub-s (3) of S. 164 are fully satisfied. The whole object of putting questions to an accused person who offers to confess is to obtain an assurance of the fact that the concession is not caused by an inducement, threat or promise having reference to the charge against the accused person as mentioned in section 24 of the Indian Evidence Act.

Sarwan Singh Vs State of Punjab
A.I.R. 1957 S.C. 637 : 1957 Cri. L.J. 1014

Recovery

When the field from which the ornaments were recovered was an open one, and accessible to all and sundry, it is difficult to hold positively that the accused was in possession of these articles. The fact of recovery by the accused is compatible with the circumstance of some body else having placed the articles there and of the accused somehow acquiring knowledge about their where about and that being so, the fact of discovery cannot be regarded as conclusive proof that the accused was in possession of these articles

Trimbak Vs The State of Madhya Pradesh
A.I.R 1954 S.C. 39 : 1954 Cri. L.J. 335

(ii) The false beard and mask were found buried in the grounds of Dewayat's house and the appellant is said to have got recovered them in the presence of parchas. But those discoveries are inadmissible in evidence because the police already knew where they were hidden.

Aher Raja Khima Vs State of Saurashtra
A.I.R. 1956 S C. 217 : 1956 Cri. L.J. 426

(iii) There were recoveries of the silver Kardoda at the instance of accused 2, a white burban and a stick from the house of accused 1 and another stick from the house of accused 3. The silver kardoda was alleged to have been removed from the person of the deceased and buried in a seculded spot which was spointed out by accused 2 and the white turban was alleged to have been stained with human blood.

Held—The silver Kardoda was an article **in common use by the people in that locality** and there was nothing to identify it with the silver kardoda alleged to have been worn by the deceased except the bare word of his wife P W.5 There recoveries, therefore, could not connect accused 1 to 4 with the crime The recovery of the silver kardoda could at best, prove that accused 2 was in the known of the same after it had been removed from the person of the deceased by whosoever was responsible for doing the deceased

to death. No charge of murder could certainly be entertained against him by reason of such recovery. The stick and the white turban recovered at the instance of accused 1 could also not connect accused 1 with the crime, the stick being an ordinary stick which was not proved to be the weapon of offence and the white turban not having been sent for chemical analysis of the blood stains alleged to have been found upon the same, The stick recovered at the instance of accused 3 was similarly innocuous and none of those recoveries could be enough to fasten upon accused 1 to 3 responsibility for the crime.

Note:—Appeal was allowed

1956 S.C. 316

(iv) The appellant stated that he would give the clothes of the deceased, Chimman which he had placed in a pit above brick-kiln and that thereafter the appellant in the presence of witnesses, dug the pit in the brick-kiln and took out the clothes. Exhibits 1-5, which were identified by reliable evidence as the clothes of the deceased.

Held:—These statements are admissible. The fact that the appellant hid the clothes of the deceased clearly indicated his guilty knowledge and is consistent only with his having murdered the deceased.

Pershadi Vs State of Uttar Pradesh
A.I R. 1957 S.C. 211 : 1957 Cri. L:J. 328

(v) The appellant had staded to him, "I have thrown him in the "Bhaar" (furnance)", The Courts below were disinclined to consider this as an incriminating circumstance against the appellant because the statement was made in anger. That the appellant made the statement appears to be beyoned doubt and even if the statement was made in anger, it is a statement of considerable significance in the present case. The statement is tantamount to the appellant intimating to Shanker Lal that he had done away with the deceased and carried out his threat. It is true that the deceased's body was not found in a furnance but in a well. but that is of little consequence. What is important is that soon after the deceased was found to be missing the appellant made a statement indicating that he had a hand in his disappearance by throwing him in a furance,

Balbir Singh Vs State of Panjab
A.I R. 1957 S.C. 216 : 1957 Cri. L. J. 481

(vi) The appellant, made a statement to the Sub-Jnspector of Police to the effect that he had buried the gold ear-rings near a 'pipal' tree and the earrings were recovered from the place pointed out by the appellant.

Held:—The Statement of the appellant that he had buried the gold ear-rings was admissiable in evidence under section 27 of the Evidence Act. The three

circumstances found against the appellant namely, (1) recovery of his blood-stained Chaddai from the room from where the murder took place, (2, recovery of the gold ear-ring which belonged to the deceased woman and (3) recovery of a blood-stained shirt from the Person of the appellant were all circumstances which connect the appellant with the crime.

Balbir Singh Vs State of Punjab.
A.I.R. 1957 S.C. 216 : 1951 Cri. L.J. 481

(vi) Accused (Deoman) made a statement in the presence of witnesses that he had thrown the gandasa in the tank and gets the same recovered, it is an information which distinctly relates to the recovery of the gandasa. This statement is admissible. The High Court was of the view that the mere fetching of the gandasa from its hiding place did not established that Deoman himself had put it in the tank and an inference could legitimately be raised that somebody else had placed it in the tank, or that Deoman had seen someone placing that gandasa in the tank or that some one had told him about the gandasa lying in the tank. But for reasons already set out the information given by Deoman is provable in so far as it distinctly relates to the fact thereby discovered and his statement that he had thrown the gandasa in the tank is information which distinctly relates to the discovery of the gandasa, Discovery from its place of hiding at the instance of Deoman of the gandasa stained with human blood in the light of the admission by him that he had thrown it in the tank in which it was found therefore, acquires significance and destroys the theories suggested by the High Court.

State of Uttar Pradesh Vs Deoman Upadhyaya
A.I.R. 1960 S.C. 1125 : 1960 Cri L.J. 1504

(vii) When on being intrrogated the appellant produced a box from a pond and handed over the same to the Sub-Inspector. He also produced a key from out of a bunch of keys before the Sub-Inspector and that key fitted the lock of the complainant which had been sent for. The Sub-Inspector took into possession both the key and the lock.

Held:—That the finding of key and recovery of the box is provable because there is no confessional nature and are admissible U/s 27 of Evidence Act.

Udai Bhan Vs The State of Uttar Pradesh
A.I R. 1962 S.C. 1116 : 1962 (2) Cri. L.J. 251

(viii) The stolen property was recoverd at the instance of the accused and the statement of the accused was as follows.

"that he would show the place where he had hidden the ornaments".

Thereafter accused led the police and dug out the ornaments from a garden.

Held—The recoveries are admissible and tbe **possession** of the stolen property was of the accused,

K. Chinnaswary Vs State of Andhra Pradesh
A.I.R. 1962 S C. 1788 : 1962 Cri. L.J.

(ix) From the mere production of the blood stained articles by the appellant one cannot come to the conclusion that the appellant committed the murder. Even if somebody else had committed the murder and the blood stained articles had been kept in the house, the appellant might produce the blood stained articles when interrogated by the Sub-Inspector of Police. It cannot be said that the fact of production is consistent only with the guilt of the appellant and inconsistent with his innocence.

Prabhoo Vs State of Uttar Pradesh
A.I.R. 1963 S.C. 1113 : 1963 (2 Cri. L.J. 182

(x) The provisions of Section 259 of the Cantonment Act can be utilized for realization of arrears of rent on land and building only if such rent is recoverable by a Board or a Military Estate Officer under the Act or the rules made thereunder. The word 'recoverable" in the context obviously means "claimable" for Section 259 itself provides for the manner of recovery. Therefore, action for recovery can be taken under Section 259 with respect to rent on land and buildings provided such rent is claimable by a Board under the Act or the rules framed thereunder.

The Cantonment Board Ambla Vs Pryar Lal
A.I R. 1966 S.C 108(Para 5) : 1966 Cri. L.J 93

(xi) Three Axes were used in the attack. Only one was however discovered at the place of occurrance. How is it that while two axes were taken away by the accused and the third was left behind. ?

Note:—Recovery of Axe was not relied upon.

State of Bihar Vs Ram Naresh Pandey & another
A.I R, 1957 S.C. 389 : 1957 Cri. L.J. 567

Recovery of Fine

It cannot be held that the period of limitation provided by Section 70 of the Penal Code for recovery of fine is inapplicable to the recovery of fines imposed by panchayati adalats.

Palakdhari Singh Vs State of Uttar Pradesh
A.I.R. 1962 S.C. 1145 : 1962 Cri L.J. 256

Reduce

Sentence was reduced to already undorgone in view of old age.

A.I.R. 1964 S.C. 986 : 1964 (2) Cri L J. 57

Reference

(i) If the Jail Superintendent actually himself punishes the accused who commits the breach of Jail Discipline, he cannot under rule 41 of Punjab Communist Detenus Rules refer the case again to the Magistrate. Such refrence is against law.

Maqbool Hussain Vs State of Bombay
A.I.R. 1953 S C. 325 : 1953 Cri. L.J. 1432

(Reference-contd)

(ii) Under Section 307 of Cr. P. C. even if the Judge disagrees with the verdict of the jury he must normally give effect to that verdict unless he is prepared to hold further and is of clear opinion' that no reasonable body of men could have given the verdict which the jury did.

Moseb Kaka Chowdhry Vs State of West Bengal
A.I.R. 1956 S.C. 536 : 1956 Cri L.J. 940

(iii) The High Court in the reference may exercise any of the powers which it might exercise upon an appeal and this includes the power to call fresh evidence conferred by Section 428 Cr.P.C. The High Court must consider the whole case and give due weight to the opinions of the Session Judge and jury and then acquit or convict the accused.

Note: Where the High Court in reference failed to consider the evidence which according to the provisions of S. 307 (3) Cr.P.C. the High Court should have done. The case was remanded to the High Court for acting under the said provisions.

Ramyed Rai Vs The State of Bihar
A.I.R. 1957 S.C. 373 : 1957 Cri. L.J.557

(iv) In fact the proceeding before the High Court are re-appraised and the assessment of the entire facts and law and in order that the High Court should be satisfied on the materials about the guilt or innocence of the accused person. The High Court should come to an independent conclusion on the material before him apart from the view expressed by the Sessions Judge.

Note:—Supreme Court heard on facts and acquitted the appellant on the charge of murder i.e U/s 302 I.P.C

Jumman Vs The State of Panjab
A.I.R. 1957 S.C. 469 : 1957 Cri. L.J.586

(v) It is legitimate to construe the Code with reference to the modern needs, whenever this is permissible, unless there is any thing in the code or in the particular section to indicate the contrary.

Mobarik Ali Ahmed Vs The State of Bombay
A.I.R. 1957 S.C. 857 : 1957 Cri. L.J. 1346

(vi) The whole and not part is to be **submitted** to the High Court in the **reference** When only those charges on which the trial judge disagreed with the jury were sent in reference to the High Court, then the reference was in competent and the High Court could not proceed to exercise any of the powers conferred upon it under S. 307 (3) Cr.P.C.

Note;—Empror V/s Jagmohan AIR 1947 All 99 (F) was overruled.

Sashi Mohan Debnath Vs State of West Bengal
A.I.R. 1958 S.C. 194 : 1958 Cri.L.J. 303

(*Refernce-contd*)

(vii) The HIGH COURT is bound to consider the evidence and arrive at an indepen dent conclusion as to the guilt or innocence of the accused irrespective of whether the accused who is sentenced to death prefers an appeal or not, and this the court must do even if the trial of the accused was held by the Jury. It has been the uniform practice of the High Courts in India to hear the reference for confirmation of sentence of death and the appeal preferred by the accused together and to deal with the merits of the case against the accused in the light of all the material questions of law as well as of fact and to adjudicate upon the guilt of the accused and the appropriateness of the sentence of death. The High Court had also to consider what order should be passed on the referenee under S.374 and to decide on **an** appraisal of the evidence whether the order of conviction for the offences for which the accused were convicted was justified and whether, having regard to the circumstances, the sentence of death was the approriate sentence. The High Court is, of course, competent when dealing with a reference under S.374 to order a retrial but the High Court is not bound to do so in every case tried with jury when the verdict of the jury is found to be vitiated because of error of law or misdirection.

Note :—Death sentence on the three appellants was maintained.

Rama Shunkar Singh Vs State of West Bengal
A.I R. 1962 S.C. 1239 : 1962 (2) Cri. L.J 296

(viii) Reference u/s 146 Cr.P. C. to the Civil Court is not to refer the matter to the Presiding Judge of a particular Civil Court but to a Court. Thus where a special or local statute refers to a constitutional Court as a' 'court' and does not refer to certain Presidining Officer of the Court, the reference cannot be said to be to Persona designata.

Ram Chandra Vs The State of Uttar Pradesh
A.I.R. 1966 S,C. 1888 : 1966 Cri. L.J. 1514

(ix Proceedings arising out of ehe reference under Section 146 Cr·P.C. are tc be governed by the Civil Procedure Code but its appeal is barred by 146 (1-d) of the Criminal Procedure Code. So appeal is not maintainable.

Ram Chandra Vs State of West Bengal
A I.R 1966 S.C. 1888 : 1966 Cri. L.J. 1514

Refresh

Where an approver was allowed to referesh his memory while giving evidence, by referring extensively to the accounts books and documents produced in the case the procedure adopted was held to be neither in violation of law nor an abuse of the powers of court U/s 159 Evidence Act.

The State of Andhra Pradesh Vs Cheemalahati Ganeswara Rag
1963 S.C. 1850 : 1963 (2) Cri. L.J. 671

Refusal

Declining to avail himself of an opportunity of explaining circumstances against him and reserving his right to make a defence at the trial does not amount to refusal to answer a question.

Ramnarayan Vs The State of Maharashtra
A.I R. 1964 S.C. 949

Registrar Ceurt

The appellant preferred an appeal to the Joint Registrar of Co-operative Societies against the order of the Assistant Registrar who was made respondent No. 2 in the appeal. One of the grounds of appeal ran as follows.

' For that the order of respondent No. 2 is mala fide in as much as after receiving the order of transfer he singled out this case out of so many for disposal before making over charge and used double standard in judging the charges against the defendants Nos. 1 and 2

Held:—There can be no doubt that the words in this case in the grounds of appeal clearly amounted to contempt of Court provided the Assistant Registrar was a Court and the Contempt of Court Act was applicable to the fact of the case.

Held Further:—That the Assistant Registrar was functioning as a Court in deciding the dispute between the bank and the appellant. It must be borne in mind that all the Registrars of all co-operative Societies in the different states are not "Courts" for the purpose of contempt of courts Act, 1952 This decision is expressly limited to the Registrar and the Assistant Registrar like the Bihar and Orissa Co-operative Societies Act.

Thakur Jugal Kishor Sinha Vs The Sitamarhi Central Co-Operative Bank
A.I R. 1967 Supreme Court 1494 Oct Part : 1967 Cri L.J 13 0

Reject

Where Complaint could not be instituted without the sanction of the State Government, on an complaint so filed the Court cannot pass any order of discharge or acquittal but should reject the complaint.

Nagraj Vs State of Mysore
A.I R. 1964 S.C. 269 : 1964 (1) Cri. L J. 161

Rejected Evidence

The question U/s 167 evidence Act is not so much whether the evidence rejected would not have been accepted against the other testimony on the record as whether that evidence 'ought not to have varied the decision.

A.I R. 1959 S C. 484 : 1959 Cri L.J. 537

Relation

(1) Whether the mother can be regarded as an "independent" witness. It may be that all mothers may not be sufficiently independent to fulfil the requirment of the corroboration rule but there is no legal bar to exclude them from its

(*Relation-contd*)

operation merely on the ground of their relationship. Independent merely means independent of sources which are likely to be tainted. In the absence of enamity against the accused there is no reason why she should implicate him falsely.

Note:—Mother was relied upon and the appeal was dismissed.

Rameshware Vs The State of Rajasthan
A.I.R. 1952 S.C. 54 : 1952 Cri. L. J. 331

(ii) The direct evidence consists of the testimony of four eye-witnesses, namely, Bela Singh, father of the deceased, who claims to have gone to the scene of occurrence on hearing an outcry and to have witnessed the murderous assault on his son Inder Singh an l his wife, Mt. Taro, to whom the murdered persons had gone for getting paddy husked and who **lived** in a house adjoining the lane **where** the murder took place ; and Gurcharan Singh, a resident of of a different village, who states that he saw the occurrence when he was going towards village Dhadar on a cycle.

Note:—The corroboration to this evidence to lend assurance was found from circumstances. Appeal was dismissed.

Luchhman Singh Vs. The State
A.I.R. 1952 S.C. 167 : 1952 Cri. L.J. 863

(iii) The corroboration that is required in the case of the testiomony of a relation witness is not what would be necessary to support the evidence of an approver but that would be sufficient to lend assurance to the evidence before the court and satisfy the court that the particular persons were really concerned in the Murder of the deceased.

Note:—Appeal was dismissed.

Note:—Only witness who was also cousin of the deceased was relied upon.

Karnail Singh Vs State of Punjab
A.I,R. 1954 S,C. 204 : 1954 Cri. L.J. 580

(iv) Relationship of the three out of four prosecution witnesses to the murdered man is no ground for not acting upon their testimony if it is otherwise reliable in the sense that the witnesses were competent **witnesses** who could be expected to be near about the place of occurrence and could have seen what happened there at the scene of occurrence.

Note.—Evidence was relied upon and the conviction upheld.

Gurcharan Singh Vs State of Punjab
A.I.R. 1956 S.C. 460 : 1956 Cri. L.J. 827

(v) When feelings run high and there was personal cause for enemity, there is a tendency to drag in an innocent person against whom a witness has a grudge along with the guilty but there should be foundations for such criticism and

(*Relation-contd*)

the mere fact of relationship far from being the foundation is often a sure guarantee of truth.

Note: - Appeal was dismissed, conviction was upheld.

Dalip Singh Vs State of Punjab
A.I.R. 1953 S.C. 364 : 1953 SCR 145

(vi) P.W. 3 being the driver of the deceased would naturally be there on the Jeep. His presence at the time of murder is established without doubt, considering that he had received a wound during the early part of the incident. But as there were reasons to think that he was not entirely disinterested and might have been exaggerating things, the High Court rightly insisted on corroboration of his evidence by other eye-witnesses before convicting any of the assailants.

Vaikuntam Chandrappa Vs State of Andhra Pradesh
A.I.R. 1960 S C. 1340 : 1960 Cri. L.J. 1681

(vii) If the offence has taken place in front of the house of the victim, the fact that on hearing his shouts, his relations rushed out of the house cannot be ruled out as being improbable, and so, the presence of eye-witnesses cannot be characterised as unlikely.

Note: — Appeal was dismissed.

Darya Singh Vs State of Punjab
A.I R. 1965 S.C. 328 : 1965 Cri. L J. 350

viii) Where the trial judge in refusing to accept the testimony of close relations observed "the eye witnesses are highly interested in the prosecution and their evidence would have to be scanned very carefully and would have to be accepted with great caution " It would not be correct to say that the trial judge had looked at the evidence with suspicion or "From entirely incorrect prospective". The possibility of partisan witness in some cases to drag innocent person along with the guilty ones is recognised in Dalip Singh Vs Punjab 1954 SCR 145.

Note:—Appeal was accepted and appellant was acquitted.

Criminal Appeal No. 148 of 1965 , decided on 6-12-1967
Deorao alies Bapurao Vs State of Maharashtra

Relative

Ordinarily a close relative would be the last person to screen the real culprit and falsely implicate an innocent person and hence the mere fact of relationship far from being the foundation for criticism of the evidence is often a sure guarantee of truth.

Dalip Singh Vs The State of Punjab
A.I.R. 1953 S C 394 : 1953 Cri. L.J. 1465 1954 S.C.R 145

Relevance

Opinion of prosecuting authority in the course of investigation attributing murder to R and not to the accused is not relevant and should not be placed on the record.

Suraj Pal Vs State of Uttar Pradesh
A.I R. 1955 S.C 419 ; 1955 Cri.L J. 1004

Relevant

Once a reasonable ground for the existence of a conspiracy is established, any thing said, done or written by one of the conspirators in reference to common intention, is relevant against the other not only for the purpose of proving the existence of conspiracy but also for proving that the other person was a party to it.

Bhagwan Swarup Vs The State of Maharashtra
A.I.R. 1965 S.C. 682 : 1965 (1) Cri. L.J. 608

The evidence of general reputation and general disposition is relevant in a criminal **proceedings.**

A.I.R. 1965 S.C. 682

Reliability of witness

In delivering charge to jury, the Session Judge can never usurp the function of the jury. He cannot pronounce on the reliability or otherwise of any witness.

Chittaranjan Das Vs State of West Bengal
A.I R. 1963 S.C. 1696 : 1963 (2) Cri. L.J. 534

Reliance

Where witnesses stated before the Police that the accused came out of the room with a blood-stained knife in his hand and admitted that he had murdered his wife; but in the witness-box they said that when the accused came out of the room he was behaving like a mad man and giving imaginary reasons for killing his wife. The statements made in the depositions are really inconsistent with the earlier statements made before the police and they are, therefore, **contradictions** within the meaning of S. 162 of the Code of Criminal Procedure. No reliance on the evidence of such witnesses can be placed as it is an obvious development to help the accused.

Dahya bhai chhagan bhai Vs State of Gujarat
A.I.R. 1964 S.C. 1563 : 1964 (2) Cri. L.J. 472

Religious Belief

The Section 292 I.P.C. has been intended to respect the raligious susceptibilities of persons of different religious persuations or creeds Courts have get to be very circumspect in such matters and to pay due regard to the

(*Religious-contd*)

feelings and religious emotions of different classes of persons with different beliefs, irrespective of the consideration **whether** or not they share those beliefs, or whether they are rational or otherwise, in the opinion of the Court.

Note I:—The image of Lord Ganesa or any objective representation of a similar kind, is held sacred by certain classes of Hindus, even though the image may not have been consercrated.

Note-II:—The first accused announced his intention of breaking the image of God Ganesa, The God sacred to the Saive Section of the Hindu community. The accused broke an idol of God Ganesa in public at the Town Hall Maidan, and before breaking the idol, he made a speech, and expressly stated that he intended to insult the feelings of the Hindu Community by breaking the idol of God Ganesa.

Nete:III:—Complaint was held to have disclosed a prima facie case U/s 295 I.P.C.

S.Veerabadran Vs E.V. Ramaswami Naickar
A.I.R. 1958 S.C. 1032 : 1958 Cri. L.J: 1565

Remand

(i) The Magistrate who makes the order of remand may be one who has no jurisdiction to try the case.

R,R. Chari Vs The State of Uttar Pradesh
A.I.R. 1951 S,C. 207 : 1951 Cri. L J. 775

(ii) Detention of an accused or a person in custody after the expiry of remand order, without any fresh order of remand committing him to further custody while adjourning the case U/s 344 Criminal Procedure Code is illegal.

Note:—Where the order produced merely directs the adjournment of the case till 11th March and contains no direction for remanding the accused to custody till that date. In habeas corpus proceedings the court is to have regard to the legality or otherwise of the detention at the time of the return and not with reference to the institution of the proceedings.

Note-II:—The documents containing order of remand is of vital importance and should be produced at the time of filing return.

Note :—Since there was no specific order of remanding the appellant to custody, so the detention was held to be illegal.

Ram Narryan Singh Vs The State of Delhi
A.I.R. 1953 S.C. 277 : 1953 Cri. L.J. 1113

(iii) Where Supreme Court finds that the appellate court has not at all applied its judicial mind to the appreciation of evidence, grave injustice has resulted there from, Supreme Court may remand the case to the first appellate court for fresh consideration.

Note:—The Hon'ble Judges of the Supreme Court permitted the evidence to be canvassed before them without going into meticulous details.

Surjan Vs State of Rajastashan
A.I.R. 1956 S.C. 425 : 1956 Cri. L.J. 815

Remedy

The remedy of the owner of the cattle seized by an accused under the mistaken impression that the cattle were damaging his crop is to take action under section 20 of the Cattle Tress Pass Act. He has no right to use force to rescue the cattle so seized.

Ramratan Vs The State of Bihar
A.I.R. 1965 S.C. 926 : 1965 (2) Cri. L J. 18

Remissions

(i) Unless the sentence of life imprisonment is commuted or remitted by appropriate authority under the provisions of the Indian Penal Code (Section 55) or the Code of Criminal procedure (Section 402) a prisoner in law is bound in law to serve the life term in prison. Government alone can remit sentence. The question of remission is exclusively **within** the province of the appropriate Government : and in this case it is admitted that, though the appropriate Government made certain remissions under S. 401 of the Code of Criminal Procedure, it did not remit the entire sentence. It is therefore, held that the petitioner has not yet acquired any right to release. The petitioner made an impassioned appeal to the S.C. that if such a construction be accepted, he would be at the mercy of the appropriate Government and that the said Government, out of spite, might not remit the balance of his sentence, with the result that he would be deprived of the fruits of remissions earned by him for sustained good conduct, useful service and even donation of blood.

Note: – The Power of remission a sentence is exclusively with the Government.

Note So Appeal was dismissed.

Gopal Vinayak Godse Vs The State of Maharashtra
A.I.R. 1961 S.C. 600 : 1961 Cri. L.J. 736

Removal

Article 311(1) of the Constitution and 1705 (c) of the Railway establishment Code cannot be read as implying that the **removal** must be by very same authority who made the appointment or by his direct superior. It is enough if the removing authority is of the same rank.

Note: – The appointment in 1944 was made by Superintendent but the appellant was removed by the Divisional Personnel Officer. It was not proved that

D.P.O. is lesser in rank, so the appeal was dismissed.

Mahesh Prasad Vs State of Uttar Pradesh
A.I.R. 1955 S.C. 70 : 1955 Cri. L.J. 249

Repeal

When a statute is repealed or comes to an automatic end by efflux of time, no prosecution for acts done during the continuance of repealed or expired act can be commenced after the date of its repeal or expiry because that would amount to the enforcement of a repealed or a dead Act. In cases of repeal of statutes this rule stands modified by Section 6 of the General Clauses Act. An expiring Act however, is not governed by the rule enunciated in that Section.

Note:—The respondents infringed the provisions of Section 2 of the Non-Ferrous Metals Contro Order, 1942, during the years 1943-1945 and thus committed an offence punishable under the above provisions of the law. No prosecution however was commenced against them till the 16th January 1950 inspite of the fact that a complaint against them had been made to the police in August, 1948. On the 19th April, 1950 the respondents made an application before the trial magistrate for quashing the proceedings commenced on the 16th Jan., 1950 on the ground that the trial could not be continued because the Defence of India Act and the Rules framed thereunder had expired and because the **Government** of Indian Act, 1935 had also been repealed by the Constitution. The magistrate refused to quash these proceedings

Note:—High Court quashed the proceedings and the Supreme Court upheld the judgment.

State of Uttar Pradesh Vs Seth Jagmindar Dass
A I R. 1954 S.C. 683 : 1954 Cri. L.J. 1736

(ii) On a question under Art 254 (1) whether an Act af Parliament prevails against a law of the State, no question of repeal arises but the principle on which the rule of implied repeal rests namely, that if the subject matter of the later legislation is identical with that of the earlier, so that they cannot both stand together. then the earlier is repealed by the later enactment, will be eqally applicable to a question under Art. 254(2) when the further legislation by Parliament is in respect of the same matter as that of the State law.

Held:—S 2 of Bombay Act. No. 36 of 1947 cannot **prevail** as against S.7 of the Essential Supplies (Temporary Powers) Act (24 of 1946) as amended by Act. No.52 of 1950.

Zoverbhai Amaidas Vs State of Bombay
A.I R. 1954 S.C. 752 : 1954 Cri. L.J. 1822

(Repeal-contd)

(iii) That if the Statute under which bye-laws are made is repealed, those by-laws are impliedly repealed and ceases to have any validity unless the repealing statue contains some provisions preserving the validity of the bye-law not with standing the repeal. The Indian Scrap Order, 1943 was one such, because it is deemed to have been made under that Act, when the Indian Scrap Order was extended to Madhya Bharat, the result was that it effectively replaced the Madhya Bharat Order on the same topic. In Madhya Bharat before the extension of the Indian Scrap Order the maximum prices chargeable by the specified type of dealer falling under column II would be those applicable to dealers in column III. If this were the true position, the result would be that when the Indian Scarp Order was made applicable to Madhya Bharat without a saving or special provision as regards sales by the Association, it would supersede that law and the special classification effected by the Madhya Bharat law would cease to be inforce. In this respect the fact that the prices fixed in **Madhya Bharat** for sales by dealers etc. specified in the three columns, corresponddeed to those fixed by the Controller in India, would be wholly irrelevant, for the authority by which the fixation was effected would be traceable to Madhya Bharat and not the Indian Law.

Harish Chandra Vs The State of Madhya Pradesh
A.I R. 1965 S.C. 932 1965 (2) Cri L J 24

iv The corresponding provisions of the Madras Act stood repealed, by virture of sub-s (1) of S. 25. By virtue of sub-s (2), the conviction of the appellant under S, 5 (1) of the Madras Act would be deemed to be conviction under S. 3(1) of the Act, an Act deemed to be in force at the time the conviction took place. It follows that the present conviction of the appellant will have to be taken as a second conviction, within the meaning of the sub-s. (1) of s 3 of the Act, and the appellant would be liable to suffer enhanced punishment under that sub-section.

Krishnamurthy alias Tailor Vs Public Prosecutor Madaras
A I.R. 1967 S.C. 567 1967 Cri L J. 544

Repair

Except in clear cases of guilt and where error is purely technical, prosecution cannot be permitted to repair the effects of their burgling.

Machander Vs The State of Hyderabad
A.I R. 1955 S.C. 792 : 1955 Cri. L.J. 1644

Report of Chemical Examiner

(i) In ordinary circumstances there would be nothing wrong in taking reports of Chemical Examiner and serologist on record. As permitted by the

(Report of Chemical Examiner-contd)

Criminal Procedure Code. When however, there is a difference of opinion in the reports, the duty to explain the difference is on the prosecution and the mere production of the report does not, under the circumstances, prove anything which can weigh against the appellant. The discovery of a blood-stained piece of cloth from the house of the appellant leads to no conclusion against him on the charge of murder. While the Chemical Examinar found blood on it, the Imperial Serologist could not say that it was human blood. The discovery of one or more dhotis with some stains of blood, **five months after the alleged murder** cannot be stated to be evidence of murder against the appellant.

Note-I:—Appellant was acquitted.

Note-II:—Kindly See: Chemical Analysis and Chemical Examiner at Page 64-65.

Tulsiram Kanu Vs The State
A.I.R. 1954 S.C. 1 : 1954 Cri. L J. 225

Reputation

The reputation means the general credit of the person amongst the public. A man may be reputed to be a good man but in reality he may have a bad disposition. The evidence of general reputation and general disposition is relevant in a criminal proceeding Under the Indian Evidence Act.

Note :—The character evidence is a very weak evidence it cannot outweigh the positive evidence in regard to the guilt of a person. It may be useful in doubtful cases to tilt the balance in favour of the accused or it may also afford a back-ground for appreciating his reactions in a given situation. Positive evidence was considered and good reputation evidence was ignored and the appeal was dismissed.

Bhagwan Swarup Vs The State of Maharashtra
A.I.R. 1965 S.C. 682 : 1965 (1) Cri. L.J. 608

Resides

The word resides in Section 488 Cr. P.C. includes also a temporary residence. The expression "last resided" means the place where the person had his last temporary residence. It would be a legitimate construction of the said expression if held that the district where he last resided with his wife should be a district in India.

Note :—The parties last resided in Africa but while the husband was on temporary visit to India. Application U/s 488 Cr. P.C. was moved.

Held :—The Courts had jurisdiction.

Mst. Jager Kaur Vs Jaswant Singh
A.I R. 1963 S.C. 1521 : 1963 (2) Cri. L.J. 413

Resile

(i) It is unsafe to convict on the testimony of an uncorrobarated testimony of a witness who has resiled in the court of Session inspite his statement transferred U/s 288 Cr. P.C. to the file of Session.

Sharnoppa Mutyappa Vs The State of Maharashtra
A.I.R. 1964 S.C. 1357 : 1964 (2) Cri. L.J. 359

Resjudicata

(i) The maxim "res judicata provertitate accipitur" is no less applicable to criminal than to civil proceedings. Here, the appellant having been acquitted at the first trial on the charge of having ammunition in his possession, the prosecution was bound to accept the correctness of that verdict and was precluded from taking any steps to challenge it at the second trial" The effect of a verdict of acquittal pronnounced by a competent court on a lawful charge and after a lawful trial is not completely stated by saying that the person acquitted cannot be tried again for the same offence. To that it must be added that the verdict is binding and conclusive in all subsequent proceedings between the parties to the adjudication.

Having regard, therefore, to the circummstances attendent upon the recovery of the revolver Ex. P-14 and the acquittal of the accused of the offence under S. 19 (f), Arms Act, this evidence could not be taken into consideration against him

Pritam Singh Vs The State of Punjab
A.I.R. 1956 S.C. 415 : 1956 Cri. L.J. 805

(ii) Contentions 2,4 and part of contention 5 in so far as they concern the original order of detention no longer survive as they were disposed of by the decision in Writ P 47 of 1966 The petitioner therefore cannot be permitted to reagitate the same questions, when it not being his case that any new circumstances have arisen justifying their reagitation.

P.L. Lakhan Pal Vs Union of India
A.I.R. 1967 S.C. 908

Respectable

Witnesses who witnessed the search were not respectable inhabitants of the locality. That circumstance would not invalidate the search The irregularity of section 103 of Cr. P.C. would not effect the legality of the proceedings.

Note :—Witnesses were the Rikhshaw Wallahas.

Sunder Singh Vs State of Uttar Pradesh
A.I.R. 1956 S.C. 411 : 1956 Cri. L.J. 801

Restore

(i) A criminal appeal cannot be dismissed for the default of the appellants or their counsel. The court has either to adjourn the hearing of the appeal to enable them to appear, or should consider the appeal on merits and pass the final order but where it has been **dismissed in default, the court has no power to review or restore the same.** Omission to write a detailed judgment in the circumstances may be not in compliance with the provisions of S. 367 of the Code and may be liable to be set aside by a Superior Court, but will not give any power to set it aside himself and re-hear the appeal. Section 369, read with S. 424, of the Code, makes it clear that the appellate court is not to after or review the Judgment once signed, except for the purpose of correcting a clerical error.

Sankatha Singh Vs State of Uttar Pradesh
A.I.R. 1962 S.C. 1208 : 1962 (2) Cri. L.J. 288

Restoration

Sections 87 and 88 of Cr.P.C. is not applicable to contempt proceedings where Government received possession through the mistake of Court. Property was ordered to be restored to Court

Mrs V.G. Peterson Vs O V. Forbes
A.I.R. 1963 S.C. 692 : 1963 (1) Cri. L.J. 633

Retain

The Magistrate has no jurisidiction over the articles seized in execution of search warrant issued under S 19 (3) of the Foreign Exchange Act and that he cannot permit the retention of such documents by the Director of Enforcement after the expiry of the period he is entitled to keep them in accordance with the provisions of S. 19-A.

Nilratan Sircar Vs Lakshmi Narayan
A.I.R. 1965 S.C. 1 : 1965 (1) Cri. L J. 100

Retracted Confession

(i) Where the conclusion of guilt rests solely on a retracted confession, not only uncorroborated in material particulars, but untrue in many parts. Such a conviction is opposed to law and cannot be allowed to stand.

Arjuna Lal Vs the State
A.I.R. 1953 S.C. 411 : 1953 Cri. L.J. 1633

(ii) It is a settled rule of evidence that unless a retracted coonfession is corroborated in material particulars, it is not prudent to base a conviction in a criminal case on its strength alone.

Note;—No evidence worthy of belief for the purposes of corroboration was found So appeal was accepted.

Puran Vs The State of Panjab
A.I.R. 1953 S.C. 459 : 1953 Cri. L.J. 1925

(Retracted Conflssion-contd)

(iii) A conviction car not be based on a retracted and uncorroborated confession No hard and fast rule can be laid down regarding the necessity of corroboration in the case of a retracted confession, But when there is a suspicion on the genuiness of the confession it would be sufficient to require corroboration of the retracted confession.

A confession should not be accepted merely because it contains a wealth of detail Unless the main features of the story are shown to be true, it is unsafe to regard mere wealth of uncorroborated detail as a safeguard of truth.

Note:—The accused was acquitted.

Muthuswami Vs State of Madras
A.I.R. 1954 S.C. 4 : 1954 Cri. L.J. 236

(iv) Confession was made at 1-10 P.M. on the 6th but was retracted at the earliest opportunity, namely before the Committimg Magistrate, and this retraction was adhered to in the Court of the Judicial Commissioner: The confession is inculpatary but corroboration is necessary because of the retraction.

Note:—No meterial corroboration was found. So the appeal was accepted.

Pangamham Kalanjory Singh Vs the State of Manipur
A.I.R. 1956 S.C. 9 : 1956 Cri. L.J. 126

(v) Where both the confessions were retracted subsequently, and the proper approach in case of this nature is to consider each confession as a whole on its merits and use it against the maker thereof, provided the Court is in a position to come to an unhesitating conclusion that the confession was voluntary and true: and though a retracted confession if believed to be true and voluntarily made, may form the basis of a conviction, the rule of practice and prudence requires that it should be corroborated by indepenent evidence,

Note: -Corroboration was found from recoveries. Conviction was upheld.

Balbir Singh Vs State of Panjab
A.I R. 1957 S.C. 216

(vi) It is open to the court to convict an accused on his confession itself though he has retracted it at a later stage. It is hardly necessary to emphasize that the act of recording confession Under S. 164, Criminal P. C., is a very solemn act and, in discharging his duties under the said section, the Magistrate must take care to see that the requirements of sub-s (3) of 164 CrPc are fully satisfied.

Note:—Session Judge found the voluntary character of confession in favour of the prosecution but sufficient time to the accused for making up his mind about confession was not given. So confession was ignored. Appellant was acquitted

Sarwan Singh Vs State of Panjab
1957 S C. 637 : 1957 Cri L.J·1 014

(vii) In the case of a person **Confessing** and then has resiled from his statement, general corroboration is sufficient while an accomplice's evidence should be corroborated in material particulars.

Note;—Human blood was found on the bed sheet in which the accused wrapped himself after the offence. No satisfactory explanation of it was given by the accused. It is sufficient corroboration of the confession. So appeal was dismissed.

Subramania Goundan Vs State of Madras
A.I R. 1958 S.C. 66 : 1958 Cri L,J. 238

Retracted confession and co-accused

(viii) The Evidence Act no where provides that if the confession is retracted, it cannot be taken into **consideration against the co-accused** or the confessing accused Accordingly, the provisions of the Evidence Act do not prevent the court from taking into consideration a reteracted confession against the confessing accused or his co.accused.

The amount of credibility to be attached to the retracted confession, however, would depend upon the circumstances of each particular case. Although a retracted confession is admissible against a co-accused by virtue of Section 30, Evidence Act but as a matter of prudence and practice a court would not ordinarily act upon it to convict a co-accused without the strongest and fullest corroboration on material particulars.

Note:—Retracted confession was corroborated from the recovery of the ornaments of the deceased at the instance of the appellant so the appeal was dismissed.

Kachu Govindan Kaimal Vs They ankoot Thekk at Lakshmi Amma
A.I.R. 1959 S.C, 71

(ix) Retracted confession may from the legal basis of a conviction but it has been held that the retracted confession must be corroborated. The High Court having regard to the said principle looked for corroboration and found it, the finding becomes one of fact which the Supreme Court will not ordinarily entertain.

Pyare Lal Vs The State of Rajasthun
A.I R. 1963 S.C. 1094 : 1963 (2) Cri. L J. 178

Restriction

No restrictions other than those prescribed under sub-rule(4) of Rule 30 of Defence of India Act can be imposed on a detenu If the appropriate authority seeks to impose on a detenu a restriction not so prescribed, the said authority will be interfering with the personal liberty of the detenu in derogation of the law where/under he is detained. If that happens the High Court, in terms of Article 226 of the constitution, can issue an appropriate writ or direction to the authority concerned to act in accordance with law.

The State of Maharashtra V/s Prabhakar Pendurang Sanzgiri
A.I.R. 1966 S.C. 424 : 1966 Cri, L J. 311

Retrial

(i) The Supreme Court in appeal will in ordinary circumstances remand the case for a fresh trial when there has been no fair and proper trial. But where the appellant has been in a state of suspense over his sentence of death for more than a year such a course would be unfair and contrary to settled practice, the accused must be set at liberty forthwith.

Mohinder Singh Vs The State
A.I.R. 1953 S.C. 415 : 1953 Cri. L.J. 1761

(ii) Where Jury trial is set aside on ground of misdirection and non-direction, Supreme Court inordinarily order for retrial but in this case their Lordships instead of ordering retrial, discharged the accused

A.I.R. 1955 S.C. 287 : 1955 Cri. L.J. 857

(iii) Where the accused has already been in jail for a little less than three years, which period of imprisonment may have been enough as a sentence U/s 392 I.P.C. retrial should not be ordered in the interests of justice. If the evidence against the appellants were above serious criticism, and that is by no means the case as already indicated, court would have had no hesitation in ordering a retrial

Ram Shankar Singh Vs State of Uttar Pradesh.
A.I.R. 1956 S.C. 441 : 1956 Cri. L.J. 822

(iv) The provisions of Ss. 236 and 237 Cr.P.C. are clear enough to enable a court to convict an accused even of an offence with which he had not been charged if the court is of the opinion that the provisions of S. 236 apply. When a case is covered by provisions of Ss. 236 and 237 Cr.P.C. the appellate court should not order the retrial it should itself dispose of the appeal on merits.

G.D. Sharma Vs State of Uttar Pradesh
A.I.R. 1960 S C 400 : 1960 Cri. L J. 541

(Retrial-contd)

(v) High Court cannot alter the finding of acquittal in certain charges recorded by the trial Court in favour of the accused while dealing with the appeal preferred by the accused against her conviction on certain minor charges and the High Court cannot order retrial over those charges on which the acquittal has been recorded.

Note:—Appellant was acquitted on the charges of 302 and 392 I.PC. but was convicted U/s 411 IPC. Single Judge of Andhra Pradesh High Court while hearing the appeal against the conviction under S. 411 I P.C ordered retrial for the offence of murder and robbery *i.e.* 302/392 I P.C.

Held:—Learned Judge acted without jurisdiction in altering the finding and order of acquittal passed in favour of the accused without any state appeal while dealing with the appeal preferred by the accused against her conviction U/s 411 I.P C.

Note —Appeal of State was dismissed and order of retrial for the major offences U/s 302 and 392 IPC. was set-aside but the later order of acquittal in respect of S. 411 IPC was ordered to stand So the accused was acquitted in all the charges

The State of Andhra Pradesh Vs Thadi Narayana
A.I.R. 1962 S.C. 240 1962 Cri.L.J. 207

(vi) The power to direct retrial or to consider the case on the merits is conferred on the High Court by Section 423(2) of Cr. P.C. in appeals against orders of acquittal as well as conviction even in cases tried with jury,

Rama Shankar Singh Vs State of West Bengal
A.I.R. 1962 S.C. 1239 : 1962(2) Cri. L J. 296

(vii) An order of **re-trial wipes out from the record the earlier proceeding** and exposes the person accused to another trial which affords the prosecutor an opportunity to rectify the infirmities disclosed in the earlier trial, and will not ordinarily be countenanced when it is made merely to enable the prosecutor to lead evidence which he could but has not cared to lead either on account of insufficient appreciation of the nature of the case or for other reasons.

In the present case, undoubtedly the trial before the Magistrate suffered from irregularities. The evidence, such as was led, was deficient in important respects but that could not be sufficient ground for directing a retrial. If the Sessions Judge thought that in the interest of justice and for a just and proper decision of the case it was necessary that additional evidence should be brought on the record he should have, instead of directing a retrial and opening the entire proceedings, restored to the procedure prescribed by S. 428 (1) of the Code of Criminal Procedure.

Note:—The case was remanded to the court of Sessions with the following directions that -

The additional evidence may be taken by the Sessions Judge himself or may be ordered to be recorded in the Trial Court. The accused shall be examined under S.342 of the Code of Criminial Procedure and be given an opprotunity to lead evidence in rebuttal, if he so desires. The Sessions Judge may require the presence of the Chemical Examiner for examination before him or before the Magistrate, if he thinks that examination viva voce of the Chemical Examiner is necessary to do complete justice in the case.

Ukha Kolhe Vs The State of Maharashtra
A.I.R. 1963 S.C. 1531 : 1963 (2) Cri. L.J. 418

(viii) There can be a fresh charge and trial under S.307, Indian Penal Code in spite of the acquittal of the appellant on the minor charges. There is hence no reasons why an order for commitment under S.307, Indian Penal Code cannot be made by the Additional Sessions Judge in spite of the acquittal of the appellant on the charges under Ss. 326, Indian Penal Code.

Ramekbal Tiwary Vs Madan Mohan Tiwari
A.I R. 1967 S.C. 1156 : 1967 Cri L.J.1076

Retrospective

(i) The constitution has no retrospective effect and even if the law is in any sense discriminatory, it must be held to be valid for all past transactions and for enforcement of rights and liabilities accrued before the coming into force of the Constitution.

Habeeb Mohamed Vs The State of Hyderabad
A.I.R. 1953 S.C. 287. : 1953 L.J. 1158.

(ii) Section 174 (4) of Cr.P.C. has not been given a retrospective effect and its violation cannot affect the validity of the trial.

Gurbachan Singh Vs The State of Panjab
A.I R. 1957 S.C. 623 : 1957 Crl. L.J 1008

(iii) The amendment to section 337 of the Code is not retrospective.

Kanta Prashad Vs Delhi Administration
A.I.R. 1958 S.C. 350 : 1958 Cri. L J. 698

(iv) The cardinal principle is that statutes must always be interpreted prospectively, unless the language of the statutes makes them retrospective either expressly or by necessary implication. Penal Statutes which create new offences are always prosectively, are some times, interpreted prosectively when there is a clear intendment that they are to be applied to past events. Another principle which also applies is that an Act designed to protect the public against acts of harmful character may be construed restrospectively. if

the language admits such an interpretation, even though it may equally have a prospective meaning

Note —S 57 of the Bombay Police Act, 1951, does not create a new offence nor makes punishable that which was not an offence. The statute cannot be said to be applied retrospectively. The act in question was thus not applied retrospectively but prospectively.

The State of Bombay Vs Vishnu Ramchandra
A.I.R. 1961 S.C. 307 : 1961 (1) Cri. L.J. 450

(v) A statute cannot be said to be retrospective because a part of the requisite for its actions is drawn from a time antecedent to its passing.

Note :—Sub Section 3 of Section 5 of the Prevention of Corruption Act is not retrospective.

Sajjan Singh Vs State of Punjab
A.I R. 1964 S C. 464 : 1964 (1) Cri. L.J. 310

(vi) Every law that takes away or impairs a vested right is retrospective Every expost facto law is necessarily retrospective. Under Art. 20 of the Constitution no person shall be convicted if any offence except for violation of a law in force at the time of the commission of that act charged as an offence' or be subjected to a penalty greater than that which might have been inflicted under the law in force at the time of the commission of the offence. But an ex Post facto law which only mollifies the rigour of a criminal law does not fall within the said prohibition.

Rattan Lal Vs State of Panjab
A.I.R. 1965 S.C. 444 : 1965 (1) Cri. L.J. 360

Returning Officer

Returning Officer deciding on validity of nomination paper under section 36 (2) Representation of People Act is not a court for the purpose of section 195 (1) (b) of the Cr. P.C and the result is that even as regards the charge under section 193 I P C, the order of magistrate (returning officer) is not appealable, as the offence is not commited in or in relation to any proceeding in court.

Virindar Kumar Vs The State of Panjab
A.I.R. 1956 S.C. 153 : 1956 Cri L.J. 326

Re-arrest

B. was convicted U/s 323/324 and was sentenced to six month's R.I. but was subsequently released on the medical ground by the District Magistrate, under the rules of the Jail Manual, but was later on re-arrested,

Held :—No rule was shown by the Government as to what lawful authrotiy there was for his re-arrest. So in the absence of such authority B's detention cannot be supported and is illegal.

Note ;—Appeal was dismissed.

State of Bihar Vs Kameshwar Prasad
A.I.R. 1965 S.C. 575 · 1965 (1) Cri. L.J. 496

Return

There is no provision under S. 19-A or any other section of the Foreign Exchange Regulation Act the documents be returned to the party from whose custody they were seized without an order from the Magistrate and that therefore, no order for their return can be made by any authority. No such express provision is necessary. Documents seizedhave to be returned if the law provides that they are not to be retained after a certain peried of time. Such a direction under the statute is sufficient justification and authority for the person in possession of the documents to return them to the person from whose possession they had been seized. Provisions are necessary for retaining documents of others and not for returning them to the persons entitled.

Nilratan Sircar Vs Lakshmi Narayan
A.I.R. 1965 S.C. 1 : 1965 (1) Cri. L.J. 100

Reversing

Please See : Appeal against acquittal 434.

Sujan Vs State of Rajasthan
A.I.R. 1956 S C. 425 : 1956 Cri. L.J. 815

Review

Please see Restore at page

Sankatha Singh Vs State of Uttar Praeesh
A.I R. 1962 S.C. 1208 : 1962(2) Cri. L J. 288

(ii) It is difficult to divorce the order of detention from the order of confirmation for without confirmation the order of detention would have no legal sustance. The Rule provides that the order of detention shall forthwith be reported, if made by an officer empowred by the Administrator to the administrator and that the Administrator shall, after taking into account all the circumstances of his case, either confirm the detention order or cancel it. It is pursuant to the detention order so confirmed, that a person remains detained, under R 30-A(8) is of that order which is confirmed.

Sadhu Singh Vs The Delhi Administratian
A.I.R. 1966 S.C. 91

(ix) The Additional Sessions Judge has no authority to set aside the acquittal of the appellant under the provisions of S. 437, Criminal Procedure Code, But the order of the Additional Sessions Judge have been affirmed by the High Court, in its order under appeal and under S. 439, Criminal Procedure Code, the High Court has jurisdiction to interfere with an order of acquittal in revision and to direct that the accused may be retried on the graver offence.

Ramekbal Vs Madan Mohan
A.I R. 1967 *S.C. 1156 : 1967 Cri. L.J. 1076*

(x) The appellant and others were tried for an offence U/s 307/148/149 I.P C. but the enquiry Magistrate after examining 11 Prosecution witnesses decided to try the petitioner U/s 251-A of the Criminal Proocdure Code.

It is manifest that the order of the Magistrate is tantamount to an implied order of discharge and the Additional Sessions Judge had therefore, jurisdiction, under S 437, Criminal Procedure Code, to set aside the order of Magistrates and to order to that the accused should be committed to trial in the Court of Sessions on the major charge under Section 307, Indian Penal Code. There is nothing in the language of S.437 Criminal Procedure Code from which it could be said that the power of the Sessions Court under that section can be exercised only when the Magistrate has made an express order of discharge. The Secton 209 (1) Criminal Procedure Code does not contemplate that an express order of discharge should be made in a case where upon the same facts it is possible to say that though no offence exclusively triable by a court of Session is made out, an offence triable by a Magistrate is nevertheless made out and the Magistrate thereafter proceeds with the trial of that offence.

The language used in S. 437, Criminal Procedure Code is wide and there is nothing in that section from which it could be gathered that the power can be exercised only when the Magistrate has made an express order of discharge.

Held—The Additional Session Judge had the jurisdiction to set aside the order of the magistrate and direct the commitment of the appellant to Session Court on charge U/s 307 of the Indian Penal Code.

Ramekbal Vs Madan Mohan
A.I.R. 1967 S.C. 1156 : 1967 Cri L J. 1076

Revisional Jurisdiction

If a magistrate is acting as a court, it is obvious that he is subject to the revisional jurisdiction conferred U/s 435, 439 Cr.P.C.

The State of Uttar Pradesh Vs Kaushailiya
A.I.R.1964 S.C. 416 : 1964 (2) Cri. L.J. 304

Right of accused

An accused is entitled in law to put further questions to a prosecution

witness by way of cross-examination in respect of what he (witness) had already stated in reply to questions put to him in cross-examination by the other co-accused.

C.T. Muniappan Vs The State of Madras
A.I.R. 1961 S.C. 175 : 1961 (1) Cri. L.J. 315

Right of Private Defence

See please "Private defence"

Right of Property

The apprehension of grievous hurt or death cannot be weighted in too fine a set of scales or in golden scales.

Note:—See Further "Private defence"

Amjad khan Vs State
A.I.R. 1952 S C. 165 : 1952 Cri- L.J. 848

Right and Remedy

Where there is right there is remedy but converse is not necessarily true.

A.I R. 1964 S.C. 386

Riot

When the accused are acquitted of riot and the charge for being member of an unlawful assembly fails, there can be no conviction of any one of them for an offence which he had not committed himself.

A I.R. 1955 S.C. 274 : 1955 Cri. L J. 721

Robbery

(i) Cricumstantial evidence against the accused, recent possession of the stolen property beloning to the deceased, Charge of murder and robbery against three person but in the charge section 34 IPC was not mentioned. Two of them acquitted. Conviction of remaining accused u/s 302 & 392 was correct as the appellant committed offence with other two unknown persons.

Wasim Shan Vs The State of Uttar Pradesh
A.I.R. 1956 S.C. 400 : 1956 Cri. L.J. 790

(ii) The deceased cutting the crops peacefully which the accused claimed to be their. The act of the deceased did not amount to robbery mentioned in the execption 2 of section 300 and there was no reasonable apprehension on the part of the accused that they would be killed or hurt by the deceased.

Gurdatta Mal Vs State of Uttar Pradesh
A.I.R. 1965 S.C. 257 : 1965 (1) Cri. L.J. 242

"S"

Sacred

The image of Lord Ganesha is held sacred by certain class of Hindus even though the image may not have been consecrated. Any object, however, trivial or destitute of real value in itself, if regarded as sacred by any class of persons would come within the meaning of the penal section. Nor is it absolutely necessary tha t the object, in order to be held sacred, should have been actually worshipped. An object may be held sacred by a class of persons withoutbeing worshipped by them. It is clear, therefore, that the courts below were rather cynical in so lightly brushing aside the religious susceptibilities of that class of persons to which the complainant claims to belong.

S. Veerabadran Chettiar Vs V. Ramaswani Naickar
A.I.R. 1958 S.C. 1032 : 1958 Cri. L.J. 1565

Same Offence

(i) Second trial which is barred under Article 20 (2) of the Constitution and by Section 26 of the General Clauses Act must be for the same offence i e. the offence whose ingredients are same.

Note :—The Petitoner was first prosecuted for violating S. 144 Cr. P. C. and for pickting of Governmont offices and residence of the officer but was acquitted Later on an information a case U/s 332/114/142/342 and U/s 307 of the Indian Pedal Code against the accused was made and he was convicted fo the offences under these sections.

Offences were not the same so the appeal was dismissed.

Note : **II**—A.I.R. 1956 S.C. 415 (Pritam Singh's Case) affirmed and 1963 S.C. 340 explained.

Manipur Administration Manipur Vs Thakchom Bira Singh
A.I.R. 1965 S.C. 87 : 1965 (1) Cri. L.J. 120

(ii) The previous case in which the accused was convicted was in regard to a conspiracy to commit criminal breach of trust in respect of the funds of th Jupiter Company. The subsequent case relates to a conspiracy in which question was to lift the funds of the Empire Company, though its object was to cover up the fraud committed in respect of the Jupiter Company.

Held :—That the defalcations made in Jupiter Company might have afforded a motive for the new conspiracy but the two offences are distinct ones. Some accused may be common to both of them, some of the facts proved to establish the Jupiter Company Conspiracy may also have to be proved to support the motive for the second conspiracy. But that in itself would not be sufficient to make the two conspiracies the one and the same offence.

Note :—See Autrofios acquit at P. 41-42, 'Bar' at Page 45 and 'Double Jeopardy.'

Bhagwan Swarup Vs The State of Maharashtra
A.I.R. 1965 S C. 682 : 1965 (1) Cri. L.J. 608

Same Transaction

(i) Where offences have been committed in the course of the same transaction, the separate trial of the accused for certain specific offences is not illegal. Section 235 is an enabling section.

Ranchhod Lal Vs State of Madhya Pradesh
A.I.R. 1965 S.C. 1248 : 1965 (2) Cri. L.J. 253

(ii) The subsequent payments, after the orders sanctioning the bills. were a part of the same transaction which started with the false representations being made by the appellant in putting forward bogus claims and which transaction only concluded after the payments were made and did not come to an end merely on orders of sanction being passed in those proceedings. In fact, in every case where property is delivered by a person cheated, there must always be a stage when the person makes up his mind to give the property on accepting the false representations made to him. It cannot be said that in such cases the person committing the offence can only be tried for the simple offence of cheating under S 417 I.P.C. and cannot be tried under S. 420 because the person cheated parts with his proprty subsequent to making up his mind to do so. The conviction of the appellant for the offence under S. 420 I.P.C. in these circumstances is in no way vitiated. (1965 S. C. 706 followed).

Bakhshish Singh Vs State of Panjab
A.I.R. 1967 S C. 752 : 1967 Cri. L J. 656

Same Type or Kind

The words "Second offence" means any act which is an offence under any of the clauses in the sub-Section which has been done later in point of time after a conviction for an offence under the Act, no matter whether the acts or commissions constituting the two offences are of the same type or not. First offence of keeping of food stuff and second offence of selling may not be offences of same type but are under the same act, so the conviction was held to be proper.

Jagdish Prasad Vs State of Uttar Pradesh
A.I.R. 1966 S.C. 290 : 1966 Cri. L.J. 194

Sanction

(i) Sanction to prosecute a public servant must be taken from the Government before the Magistrate takes the cognizance of the offence.

R.R. Chari Vs State of Uttar Pradesh
A.I.R 1951 S. C. 207 : 1951 Cri. L.J. 775

(ii) Where upon the facts, the commission of several offences is disclosed, some of which require sanction and others do not, it is open to the complainant to proceed in respect of those only which do not require sanction, because to hold otherewise would amount to legislating and adding very materially to the provisions of Ss. 195 to 199 Criminal P. C. which deal with the requisites for the prosecution of certain specified offences and the provisions of those sections must be limited to prosecutions for the offences actuallyy indicated. The ingredients of the offence under Ss. 182 cannot be said to be the ingredients for the offence under S.500. Nor can it be said that the offence relatting to giving false information relates to the same group of offences as that of defamation. S.195 does not bar the trial of an accused person for a distinct offence disclosed by the same facts and which is not included within the ambit of that section, it has also to be borne in mind that the provisions of that section cannot be evaded by resorting to devices of camouflages.

Note.—Appellant was prosecuted U/s 182, 297 and 500 of I.P.C. No sanction for offences U/s. 297 and 500 is required so trial for those without sanction could proceed.

Basir-ul-Huq Vs The State of West Bengal
A.I.R. 1953 S.C. 293 : 1953 Cri. L J. 1232

(iii) It cannot be held that it is for the same Government which sanctioned the prosecution U/s 197(1) to specify the court before which the trial is to be held But even when it chooses to exercise the power of specifying the court before which the trial is to be held, such specification of the court does not touch the question as to who is the person to function in which court before which the trial is to take place. That is a matter still left to be exercised by the

(*Sanction-contd*)

provincial Government of the area where the trial is to take place. The word 'court' in sub-section (2) of S. 197 Cr. P.C. cannot be treated as being the same as a person in Sub-section (1) of S. 14 of the Code.

Note:—Lacuna can be remedied in the course of trial, 1948 P.C. 82 approved.

M.K. Gopalan Vs State of Madhya Pradesh
A.I.R. 1954 S.C. 362 1954 Cri. L.J. 1012

(iv) It is no more necessary for the sanction under the Prevention of Corruption Act to be in any particular form or in writing or for it to set out the facts in respect of which it is given. A sanction based on the facts set out in a letter, namely, the information received about the collection of heavy sums as bribes and the finding of Rs. 2.697 in his possession would be sufficient to validate the present prosecution It is evident from this letter and from the other evidence that the facts placed before the Government could onlp relate to offences under S. 161 of the Indian Penal Code and clause (a) of Section 5 (1) of the Prevention of Corruption Act They could not relate to clause (b) or (c) Therefore when the sanction was confined to Section 5(2) it could not, in the circumstances of the case, have related to anything but clause (a) of sub-section (1) of Section 5. Therefore, the omission to mention caluse (a) in the sanction does not invalidate it.

Biswabhusan Naik Vs State of Orisa
A.I.R. 1954 S:C. 359 : 1954 Cri. L.J. 1002

(v) Sanction under section 197 of Cr.P.C. is not necessary for instituting proceedings against a public servant on charges of conspiracy and of bribery.

Ronald word Mathan Vs State of Whst Bangal
A.I.R. 1954 S.C. 445 · 1954 Cri. L.J 1161

(vi) The burden of proving that the requisite sanction has been obtained rests on the prosecution and such burden includes proof that the sanctioning authority has given the sanction in reference to the facts on which the proposed prosecution was to be based : and these facts might appear on the face of the sanction or might be proved by extraneous evidence. A defective or invalid sanction cannot confer jurisdiction upon the court to try the case.

Note:—Appeal was allowed.

Madan Mohan Singh Vs State of Uttar Pradesh
1954 S.C. 637 : 1954 Cri L.J. 1656

(vii) Where the sanction is not signed by the Excise Commissioner (authorised officer for granting sanction) but purports to have been signed by his personal assistant, such draft of sanction though approved and then signed, is not a proper sanction but still the sanction may be taken as in fact given by the Excise Officer.

Madan Mohan Singh Vs. State of Uttar Pradesh
A.I.R. 1954 S.C. 637 : 1954 Cri. L.J. 1656

(*Sudden Fight-contd*)

tage or acted in a cruel or unusual manner thus bringing the case within exception 4 there to with the result that the offence committed was culpable homicide not amounting to murder.

Chamru Budhwa Vs State of Madhya Pradesh
A.I.R. 1954 S.C. 652 : 1954 Cri. L.J. 1676

(iii) On the 30th of July, 1953. the accused's party demolished the lime crushing machine, when two women, Marwan and Nathian, relations of the deceased, intervened where upon the accused assaulted them and in the course of this assault, the woman received injuries with sharp edged weapons. At that time, Surja a young lad of 11, ran to the place where the deceased Mansa Ram was working and informed him of what had occurred. On hearing this, Mansa Ram arrived on the scene with Rup Chand (P.W.3) and Chaman Lal (P.W.4). Immediately a fight ensued and in the course of this fight Mansa Ram received fatal injuries and Rup Chand (P.W.3) was also injured. Therefore, it is clear that the injury on Mansa Ram was caused without premeditation in a sudden fight, after the appellant and his party arrived, and during the course of the second incident. This cannot be gainsaid. That the appellant inflicted the injury on Mansa Ram in the heat of passion and upon a sudden quarrel cannot also be doubted.

Held:—The appellant caused the injury, he did it with the intention of causing death or such bodily injury as was likely to cause death and therefore, the offence is one under Part I of section 304 of the Indian Penal Code, In the result, the conviction under Section 302 of the Indian Penal Code is set aside but the appellant is convicted under section 304 Part 1, of the Indian Penal Code and sentenced to rigorous imprisonment for seven years

Dharman Vs State of Punjab
A.I R. 1957 S.C. 324 · 1957 Cri. L J. 420

Sufficient in the ordinary course of nature

The sufficiency of the injury to cause death in the ordinary course of nature is something which must be proved and cannot be inferred from the fact that death has in fact taken place. This is true of some cases. If a blow is given by reason of which death ensues, it may be necessary to prove whether it was necessarily fatal or in the language of the Code sufficient in the ordinary course of nature to cause death. In such a case it may not be open to argue backwards from the death to the blow, to hold that the sufficiency is established because death did result. As death can take place from other causes the sufficiency is required to be proved by other and separate evidence. There are, however, cases and cases Where the victim is either helpless or rendered helpless and the offender does some act which leads to death in the ordinary course and death takes place from the fact of the offender and not

hing else, it is hardly necessary to prove more than the acts themselves and the causal connection between the acts and the end result.

Rajwant Singh and another Vs Sate of Kerala
A.I.R. 1966 S.C. 1874 : 1966 Cri. L.J 1509

Note:—See injury. (ii) and (v) a238 239 pages.

Summon Case

An offence U/s 448 Penal Code is a summon case. If the Magistrate adopts the procedure prescribed for a case triable as a warrant case, he commits an irregularity, which does not vitiate the proceedings and is curable by the provisions of Section 537 when no prejudice to the accused is established.

Gopal Das Sindhi and others Vs State of Assam and another
A.I.R. 1961 S.C. 986

Suppression of Immoral Traffic

(a) Sections 3 and 7 provide for the punishment of persons guilty of the offence mentioned therein. Any contravention of the provisions mentioned therein amounts to a cognizable offence in view of section 14, whereas a proceeding under S.18 is in no sense a prosecution. It is a preventive measure. It is intended to minimise the chance of a brothel being run or prostitution being carried on in premises near about public places. Naturally, in the case of prosecutions, a regular trial with a right of appeal is provided for. The enquiry contemplated by S.18 is summary in character.

(b) The attachment contemplated by that section can ensure only for a period of one year.

(c) It is necessary to remember that SS. 3 and 7 deal with persons guilty of offences whereas S. 18 deals with the premises mentioned therein. It is not correct to say that the set of facts to be proved in prosecutions under S.3 and 7 and in proceeding under S. 18 are idential.
In the former the prosecution to succeed has to establish either the intention or knowledge referred to therein but in the later they are not necessary ingredients. Sectian 18 provides for two classes of cases namely (1) those coming either under S. 3 or 7 as well as under S.18 and (2) those coming only under S 18.

(d) The magistrate who is also a court as provided in S. 22 must at the first instance proceed against the persons complained against under the penal provisions in S.3 or 7 as the case may be, and only after the disposal of those cases take action under S 18 if there is occasion for it.

(e) Under S. 190 (1) (b) of the code of criminal Procedure, the magistrate is bound to take cognizance." He has no **discretion** in the matter. otherwise that section will be violative of Art 14. **"may take cognizance" means "must take cognizance"**

Where the magistrate has proceeded against the respondent u/s 18 of the act without first taking action u/s 3 of the Act, the proceedings are not in accordance with law and are so vitiated.

Note:—Magistrate was allowed to take fresh Proceeding in accordance with law

Note Facts—Sh. A.C. Aggarwal Sub Divisional Magistrate Delhi issued notices to show cause why the premises occupied by them should not be attached under S. 18 (1) of the Act. Those notices were issued on the basis of police reports that those premises were being used as brothels. In reply amongst other pleas the respondents challenged the validity of S. 18 also.

A.C. Aggarwal SDM and another Vs [illegible]
A.I.R. 1968 S.C. [illegible] 1968 [illegible]

Note:—See immoral Traffic at page 227 for further citations also.

Supreme Court

(i) Is supreme Court bound by its own decision ? No.

There a Bench of 7 Judges unanimously held that "there is nothing in the Constitution which prevents the Supreme Court from departing from a previous decision of its own if it is satisfied of its error and of its baneful effect on the general interests of the public. If the aforesaid rule of construction accepted by this Court is inconsistent with the legal philosophy of our Constitution, it is our duty to correct ourselves and lay down the right rule. In constitutional matters which affect the evolution of our policy, we must more readily do so than in other branches of law, as perpetuation of a mistake will be harmful to public interests. While continuity and consistency are conducive to the smooth evolution of the rule of law, hesitancy to set right deviations will retard its growth."

Note:—In this case the rule laid down 1955 Supreme Court [illegible] was reconsidered.

West Bengal Vs Corporation of [illegible]
A.I.R. 1967 S.C. 997 (July Part) [illegible]

(ii) It is not the function of the Supreme Court to reason, evidence and argument on a point of fact which did not prevail with the courts below

A.I.R. 1952 S.C. [illegible]

(iii) It is not the *practice of the Supreme Court to decide questions which are not properly raised before it or which do not arise directly for decision.*

(iv) Supreme Court will not reopen the finding of the High Court when there is concurrent finding of facts and there is no question of law involved and the conclusion is not perverse or opposed to principles of natural justice or revolving to judicial conscience

Nirajnan Singh and other Vs State of Uttar Pradesh
A I.R. 1957 S.C. 142 : 1957 Cri. L J. 294

(vi) Supreme Court is not a court of criminal appeal and it would not, therefore examine the reason of the High Court for coming to certain conclusion of facts.

C.S.D Swami Vs The State
A.I.R. 1960 S.C. 7 1960 Cri. L.J. 131

(vii) The Supreme Court in appeal can do what the High court could have done

Abdul Rehman Vs Mohd. Hazi Ahmed
A.I.R. 1960 S.C. 82 : 1960 Cri L.J. 158

(viii) Accused acquitted by special judge but convicted by High Court on appeal. Supreme Court can form its own conclusion, when the findings on questions of facts are not concurrent.

Mohd. Dastagir Vs State of Madras
A.I R. 1960 S C. 756 : 1960 Cri. L.J. 1159

(ix) Supreme Court set-aside the order of Magistrate passed U/s 488 Cr P.C. which was based on the non-satisfaction of preliminary enquiry.

Nandlal Misra Vs Kanhaiyalal Misra
A.I.R. 1960 S.C. 882 : 1960 Cri. L.J. 1264

(x) Session Judge awarding the sentence of death and the High Court acquitting. The Supreme court while reversing the order of High Court can confirm the sentence of death.

State of Uttar Pradesh Vs Deoman Upadhyaya
A.I.R. 1960 S.C. 1125 : 1960 Cri. L J. 1504

(xi) What may be called the golden thread running through all the decisions of the Supreme Court is the rule that in deciding appeals against acquittal the court of appeal must examine the evidence with particular care, must examine also the reasons on which the order of acquittal was based and should interfere with the order only when satisfied that the view taken by the acquitting Judge is clearly unreasonable.

Ramratan and others Vs State ef Rajasthan
A.I.R. 1962 S.C. 424 : 1962 (1) Cri L.J. 473

(xii) Supreme Court will ordinarily be reluctant to interfere with the finding of fact recorded by the High Court particularly where the said findings are based on appreciation of oral evidence,

M. G. Agarwal etc. Vs State of Maharashtra
A.I.R. 1963 S.C. 200 : 1963 (1) Cri. L.J. 235

(xiii) High Court hearing appeal did not examine evidence withthe care it deserved-in view of the serious error made by High Court, Supreme Court found it necessary to examine evidence for itself.

Smt. Mathri and others Vs State of Punjab
A.I.R. 1964 S.C. 986 : 1964 (2) Cri. L J. 57

(xiv) Where the Supreme Court has orderd the Registrar of the High Court to make complaint in writing against the appellants for their prosecution U/s 193 199 and 211 of IPC , the Supreme Court in appeal will not ordinarily do more than examine whether the High Court has fairly considered a case to reach the conclusion that Prima Facie there is good reason to launch the prosecution, that there is reasonable prospect of conviction and it is expedient in the interest of justice to order a prosecution

Haridas and another Vs State of West Bengal
A.I.R. 1964 S.C. 1773 : 1964(2) Cri. L.J. 737

Supreme Court interference

(xv) In criminal proceedings of the character where sentences of death are imposed on the appellant, it may not be appropriate to refuse to consider relevant and meterial pleas of fact and law only on the ground that they were not urged before the High Court. If it is shown that the pleas were actually urged before the High court and had not even been considered by it, then of course, the party is entitled as of right to obtain a decision on those pleas from the Supreme Court But even otherwise no hard and fast rules can be laid down prohibiting such pleas being raised in appeal under Article 136 of the Constitution.

Masalti Vs State of Uttar Pradesh
A.I.R. 1965 S.C. 202 : 1965 (1) Cri. L.J. 226

Supreme Court

(xvi) The Supreme Court does not ordinarily interfere with a finding of the High Court based on appreciation of evidence, unless there are strong reasons for doing so.

Note:—In this case the appellate Court did not interefere on the question of fact.

Jagat Bahadur Vs State of Madhya Pradesh
A.I.R. 1966 S.C. 945 : 1966 Cri. L. J. 709

Supreme Court's Practice

(xvii) It is not the practice of Supreme Court to express opinion on questions which do not arise for decision in the case in hand.

Sindhi Lohana Chaithram Parasiam Vs State of Gujrat
A.I.R. 1967 S.C. 1532 (Oct. Part) : 1967 Cri. L.J. 1396

(xviii) **Note:**—'See **Practice**' '**Power**' and '**Question of fact**'.

Surety Bond

(i) Surety bond in 1953 executed in favour of 'King Emperor Caiser-e-Hind' is not one under Code- Forefeiture order cannot be passed.

State of Uttar Pradesh Vs Mohd. Sayed
A I R. 1957 S.C. 587

(ii) The provisions of section 502 Cr. P.C. are meant for the continuity of the surety bond on the basis of which an accused has been released on bail till the time accused is before the court and for taking further action in case the accused desires to offer an other security in place of one who is to be discharged. Provision of 502 Cr.P.C. are not conditions precedents for such acceptance.

Bekaru Singh Vs State of Uttar Pradesh
A.I.R. 1963 S.C. 430 · 1963 (1) Cri.L J. 335

(iii) The provisions in section 500 Sub Sec. (1) Cr.P.C. contemplates that the accused is to be released on the execution of the bonds which shall be accepted on their face value in the first instance. The magistrate may send after releasing the accused for enquiry of the property to Tehsildar.

Bekaru Singh Vs State of Uttar Pradesh
A.I R 1963 S.C. 430 . 1963 (1) Cri. L J. 355

Surmise

The Court was not justified to base a finding on a pure surmise that it might have been done only in anticipation of the accused entering into a contract with the government.

State of Bombay Vs Rusy Mistry and other
A.I.R. 1960 S.C. 391 : 1960 Cri. L.J. 532

Suspence

Where there has been no fair and proper trial, the Supreme Court in appeal will in ordinary circumstances remand the case for fresh trial but where the appellant has been in a state of suspense over his sentence of death for more than a year such a course would be unfair and contrary to the settled practice and the accused must be set at liberty in such a case.

Mohinder Singh Vs The State
A.I.R. 1953 S.C.415 : 1953 Cri. L.J 1761

Suspicion

General suspicions are not by themselves enough in an appeal against acquittal to dispute the credibilty of witnesses, whom a trial magistrate was inclind to accept.

S.A R. Biyabani Vs State of Madras

A.I.R. 1954 S.C. 645 : 1954 Cri. L.J. 1665

(ii) In a criminal case, mere suspicions, however, strong cannot take the place of proof

Sarwan Singh Rattan Singh Vs State of Panjab
A.I.R. 1957 S.C, 637 : 1957 Cri. L.J. 1014

And also, Sanwant Khan Vs State of Rajasthan
A.I.R 1956 S.C. 654 : 1956 Cri. L J. 150

"T"

Tape Record

(i) Tape recordings were refered to by the petitioner in his Writ petition as part of the evidence on which he proposed to rely in support of his assertions with regard to the substance of what passed between him and the Chief Minister of Punjab and his famliy members on the several matters which were the subject of allegation in the Petition.

Held : –Tape recorded evidence is admissible and the evidence, afforded by the tape recorded talks, are to be considered in appreciating the genuineness of the talks recorded and in the recording whether the petitioner were substantiated or not ByJjs Raghbar Dayal & **Mudholkar** Tape recording evidence can only be corroborative evidence of the statement of appellant that the other persons had made such statements but it cannot be direct or primary evidence.

Note :—Punjab High Court's judgment reported in A.I.R. 1963 Punjab 298 where such evidence was held inadmissible was reversed.

S. Partap Singh Vs State of Punjab
A.I.R. 1964 S.C. 72

(ii) The appellant offered on 18th July Rs-25 as bribe to one Shaikh, a bill clerk for not executing the warrant against the appellant but Shaikh did not accept On August 2,1960 the appellant had a telephonic talk with Shaikh and fixed an appointment at Shaikh's residence in the evening. Shaikh lodged a complaint with the Anti-Corruption Bureau reporting the offence of a bribe of Rs 25 on July 18 and the appointment at his residence in the evening of august 2 Mahajan, a police officer set up a microphone in the room of Shaikh which was connected to a tape recorder in the inner room. At appointed hour the appellant came to Shaikh's residence and was received by Shaikh in the outer room. Shaikh and the appellant had an intimate conversation. The appellant offered a bribe to Shaikh, produced ten currency notes of Rs. 10/-each and gave

(*Tape Record contd*.

them to Shaikh. When Shaikh gave the pre-arranged signal "Salim pan lao". Mahajn and other members of his party entered the outer room and found the currency notes in Shaikh's short pocket. The tape-recorder was switched on as soon as the appellant arrived and was switched off after the signal was given. The conversation between Shaikh and the appellant was recorded in the tape recorder. The tape remained in the custody of Mahajna From the shorthand notes made after the tape was replayed, one Yakub prepared a transcription of the conversation. The accuracy of the transcription is admitted. At the trial of the case, the tape recorder was played in court.

Held:—The contemporaneous dialogue between them formed part of the res gestae and is relevant and admissible under S 8 of the Indian Evidence Act. The dialogue is proved by Shaikh. The tape record of the dialogue corroborates his testimony. The process of tape recording offers an accurate method of storing and latter reproducing sounds

Held further that if a statement is relevant, an accurate tape record of the statement is also relevant and admissible. The time and place and accuracy of the recording must be proved by a competent witness and the voices must be properly identified. One of the features of magnetic tape recording is the ability to erase and re-use the recording medium. Because of this facility of erasure and re-use, the evidence must be received with caution. The court must be satisfied beyond a reasonabie doubt that the record has not been tampered with

The fact that the tape recording was done without his (appellants) knowledge is not of itself an objection to its admissibility in evidence. In saying so, the Court does not lend its approval to the police practice of tapping telephone wire and setting up hidden microphones for the purpose of tape recording.

Yusuf Esmail Nagree Vs The State of Maharashtra
A.I.R. 1968 S.C. 147 : 1968 Cri. L.J. 103

Tax

In trying to get the benefit under the ineffictive notification issued u/s 3A of the U P. Sales Tax of 1948, the appellant evaded payment of tax under section 3 which they were in any case liable to pay. It could not be said that no offence was committed under section 14 (d) of the Act.

M/s Chhota bhai Jetha bhai Patel and Co. Petitioners Vs State of Uttar Pradesh and other
A.I.R. 1962 S.C. 1614

Telegraph

Please Sec 'Radio' at Page 410.

State of Bihar Vs Maugal Sao
A.I.R 1963 S.C. 445 : 1963 (1) Cri. L.J 338

Telegraphic Message

Section 88 of the Evidence Act enacts that while the Court may presume that the message delivered to the addresses corresponds with the message as delivered at the office of transmission, no presumption shall be made as to the person by whom such message was sent.

Note:—In this case, there is no evidence that it was the defendant who sent exhibit H-1 (Telegraphic message on the other hand, he has specifically denied it. Exhibit H-1 must, therefore, be held to be not proved, and no finding that the defendant had authorised the payment to Mr. Henry Tapp could be based thereon.

SriKishore Chandra Vs Ganesh Dass
A I.R. 1954 S.C. 316

Tehsildar

See:—Surety Bond.

Bekaru Singh Vs State of Uttar Pradesh
A.I.R. 1963 S.C. 430 : 1963 (1) Cri. L.J.335

Tendeny

In India tendency to include the innocent with the guilty is peculiarly prevalent and it is very difficult for the court to guard against the danger. The only real safeguard against the risk of condemning the innocent with the guilty lies in insisting on independent evidence which in some measure implicates such accused.

Kashmira Singh Vs State of Madhya Pradesh
A.I.R. 1952 S.C. 159

Territorial Jurisdiction

See:—Jurisdiction. (iii) iv at page 268 to 273.

Ram Chandra Prasaa Vs State of Bihar
A.I.R. 1961 S,C. 1629 : 1961 (2) Cri L.J. 811

Testimony

Though the direct testimony against all the accused is the same, does not necessarily follow that the rest of the accused (appellant) must be similarly acquitted (like his co-accused) when a clear motive can be alleged against the appellant.

Note:—The evidence against the appellant was relied upon and the conviction upheld.

Gurcharan Singh and another Vs State of Punjab
A.I.R.1956 S.C. 460 : 1956 Cri· L.J. 327

Time

Court should insistupon giving an accused person at least 24 hours to decide whether or not he should make confession.

Note·—accused was given only half on hour to think about the statement which he was going to make and soon after the confessional statement was recorded.

Held:—No enough time was given SO.' Such confession was not relied upon and the appellant was acquitted.

Sarwan Singh Rattan Singh Vs State of Punjab
A.I.R. 1957 S.C. 637 : 1957 Cri. L.J. 1014

Time Factor

The presumption permitted to be drawn under Section 144 illustration (a) Evidence Act, has to be read alongwith the important time factor. If ornaments or things of the deceased are found in the possession of a person soon after the murder, a presumption of guilt may be permitted. But if several months expire in the interval, the presumption may not be permitted to be drawn to the circumstances of the case.

Note.—In this case recovery was made afrer 5.1/2 months and presumption was not drawn.

Tulsi Ram Vs The State
A.I.R. 1954 S.C. 1 : 1954 Cri. L.J. 225

Theft

It is clear from the definition of theft in section 378 of I.P.C. that the gain or loss contemplated need not be a total acquisition or a total deprivation but it is enough if it is **a temporary retention of property** by the person wrongfully gaining or a temporary "keeping out" of property from the person legally entitled.

Note:—The appellant with his co-accused were receiving training as a flying cadet. They removed an Aircraft without authorisation and without observing any of the formalities which are pre-requisites for an aircraft fight It is also admitted that some time in the forenoon the same day they landed at a place in Pakistan about 100 miles away from the Indo-Pakistan border.

Held—The taking out of the Harward aircraft by the appellant for the unauthorised fight has in fact given the appellant the temporary use of the aircraft, for his own purpose and has temporarily deprived the owner of the aircraft-viz. the Government, of its legitimate use for its purposes, i.e., the use of this Harvard alrcraft for the Indian Air Force Squadron that day. Such use being unauthorised and against all the regulations of aircraft flying was clearly a gain or loss by unlawful means. So the appellant committed the offence of theft.

K.N. Mehra Vs. State ef Rajasthan
A.I.R. 1957 S.C. 369 1957 Cri. L.J 552

(Theft-contd)

(ii) To cmmit theft one need not take movable property permanently out of the possession of another person. A temporary period of deprivation or dispossession of the property of another causes loss to the other. That a person will act dishonestly if he temporarily dispossesses another of his property is made clear by illustrations (b) and (1) of S. 378 of the Indian Penal Code.

Note;—The case of the prosecution is that one Ram Kumar Ram was a friend of the appellant, Pyarelal Bhargava, who was a Superintendent to the Chief Engineer's office, Alwar. At the instance of Ram Kumar Ram, Pyarelal Bhargava got the file Ex. PA/1 from the Secretriat through Bishan Swarup, a clerk, before December, 16, 1948, and took the same file to his house sometime between December 15 and 16, 1948, and made it available to Ram Kumar Ram, for removing the affidavit filed by him. Thereafter the appellant on December 16, 1948 returned it to the office. On these facts it was **contended** that the prosecution has not made out that the appellant dishonestly took away any movlable property within the meaning of S. 378 of the Indian Penal Code.

Note:—The appellant has been rightly convicted of the offence of theft.

Pyare Lal Bhargava Vs The State of Rajasthan
A.I.R. 1963 S.C. 1094 : 1963 (2) Cri. L.J. 178

(iii) Fishes are also regarded as being in possession of a person who owns an exclusive right to catch them in a particular spot known as a fishery but only within that spot. There can thus be theft of fish from a tank which belongs to another and is in his possession, if the offender catches them without the consent of the owner and without any bonafide claim of right.

"If there be in the prisoner any fair pretence of property or right, or if it be brought into doubt at all, the Court will direct an acquittal.

"It is not theft if a person, acting under a mistaken notion of law and believing that certain property is his and that he has the right to take the same ....removes such property from the possession of another"

Note:—The accused who were recorded tenants of a tank caught fish only once for a ceremony in their house when there was a real dispute about possession of the tank between complainant and the accused.

Held:—There was an absence of animus furandi and the circumstances bring this case within the rule that where the taking of movable property is in the assertion of a bonafide claim of right, the act though amounts to a civil injury, does not fall within the offence of theft.

Chandi Kumar Das Karmarkar and another Vs Abandhar Ray
A.I.R. 1965 S.C. 585 : 1965 (1) Cri. L.J. 496

(Theft-contd)

(iv) When a person seizes cattle on the ground that they were trespassing on his land and causing damage to his crop or produce and gives out that he was taking them to the pound, he commits no offence of theft, however. mistaken he may be about his right to that land or crop. The remedy of the cattle so seized is to take action under S.20 of the cattle Trespass Act.

Ramratan and others Vs The State of Bihar and another
A.I.R. 1965 S.C. 926 . 1965 (2) Cri. L.J. 18

(v) Whoever abstracts or consumes or uses electrical energy dishonestly commits a statutory theft.

Jagannath Singh alias Jainath Singh Vs B. S. Ramaswamy
A.I R. 1966 S.C. 849 : 1966 Cri. L.J. 697

Threats

(1) That the offence of criminal intimidation was committed by threatening X and his daughter with injury to their reputation by having the indecent photographs of the daughter published; the intent mentioned was to cause alarm to X and his daughter. The real inention, as disclosed by the evidence accepted by the trial Magistrate and the High Court, was to force X to pay "hush money". Section 506 is the penal section which states the punishment for the offence of criminal intimidation.

Held:—Conviction under Section 506 Penal Code held not illegal.

Romesh Chander Arora Vs The State
1960 S.C. [54 : 1960 Cri. L.J. 177

(II) The threat, inducement or promise must proceed from a person in authority and it is a question of fact in each case whether the person concerned is a man of authority or not. What is more important is that the mere existence of the threat, inducement or promise is not enough, but in the opinion of the court the said threat, inducement or promise shall be sufficiant to cause a reasonable belief in the mind of accused that by confessing he would get an advantage or avoid any evil of a temporary nature in reference to the proceedings against him.

Note :—Chief Secretary before whom the accused made the statement expressed his opinion that if the whole truth did not come out, he would hand over the enquiry to the police. Thereafter the appellant made the confessional statement.

Held :—That the statement did not appear to the Court to be a threat but was a general statement.

(ii) Chief Secretary of the government is an authority within the meaning of S.24 of the evidence Act.

Held Further:— that there was no threat.

Pyare Lal Bhargava Vs State of Rajasthan
A.I.R. 1963 S C. 1094 : 1963 (2) Cri. L.J. 178

Third Judge

(i) Section 42 of the Code contemplates that it is for the third judge to decide on what points he shall hear arguments, if any, and that postulates that he is competely free in resolving the difference as he thinks fit.

Babu and oth rs Vs The State of Uttar Pradesh
A.I R. 1965 S.C. 1467 (Oct. Part).

Note :—(ii) See 'Sentence' (xxxi) at Page 484.

Thumb Impression

Where the thumb impression of the deceased was affixed after the death but the dying declaration was otherwise complete e.g. accusation that this day 24th January, 1960 in the afternoon at 12-30 Muniappan, son of Kala Geundan of Kannan Kinicri stabbed me in my body with knife" is complete and there is nothing to show that deceased wanted to say anything more.

Held :—Such complete dying declaration is admissible and hardly needs corroboration.

Note :—1956 S C. 168, 1958 S C. 22 were relied upon and 1250 A.C. 203 was distinguished.

Muniappan Vs The State of Madras
A.I R. 1962 S.C 1252 : 1962 (2) Cri. L J. 404

Torture

Torture by police during investigation is not protected under the provisions of the Madras District Police Act or Criminal P.C. or any ony other law.

Note :—Police sub Inspector and two other police officers inflicted injuries on the person of complainant acting in concert for the purpose of extorting from him information which might lead to the detection of an offence and restoration of stolen property. It is also the prosecution case that for this purpose these three respondents wrongfully confined Arige Ramanna in a room at the Kadiri police station and it was there when he was thus confined that the injuries were caused. The prosecution case further is that when after infliction of the injuries when, Arige Ramanna appeared to be in a bad state, these respondents removed him from the police station and his body thrown, at the place where it was ultimately found, with the intention of screening themselves from punishment

(*Torture-contd*)

Held :—The respondents (now in appeal against their acquittal) have committed offence under S. 330 of the Penal Code, so they are convicted and sentenced each of them to five years' R.I.

The State of Andhra Pradesh Vs N. Venugopal and others
A I.R. 1964 S.C. 33 : 1964 (1) Cri. L.J. 16

Tracker's evidence

The tracker's evidence can be relied upon as a circumstance which, alongwith other circumtances, would point to the identitiy of the culprit though by itself it would not be enough to carry conviction in the minds of the court.

Note :—Science of identification of foot prints is no doubt a rudimentary science and not much reliance can be placed on the result of such identification.

Note :—The evidence of the trackers and the fact that shoes were found in the house of the accused and the impressions made thereby tallied with the moulds prepared from the foot-prints on the spot were even otherwise enough to establish the identity of the foot-prints and point to Pritam Singh Fatehpuri as one of the culprits.

Note :—Appeal was dismissed.

Pritam Singh and another Vs The State of Punjab
A.I.R. 1956 S.C. 415 : 1956 Cri L.J. 805

Trade & Merchandise Marks Act. 1958

The legislature in enacting S. 92 of the Act 43 of 1958 has clearly made departure from S.15 of Act 4 of 1889 in important respects Where as under Section 15 (Trade & Merchandise Marks Act 1889) prosecution had to be commenced whithin three years next after the commission of the offence or within one year after the first discovery thereof by the prosecutor, under section 92 of Trade Merchandise Act, 1958 the prosecution must be commenced before the expiration of three years next after the discovery by the prosecutor of the offence charged, whichever expiration first happens. Under Section 92 it is plain the period commences to run from the date of the commission of the offence charged or from the date of discovery by the prosecutor of the offence charged. The argument which could be raised under Section 15 and was approved in Ruppell's case (1889) ILH 22 Madras 488, that the Legislature intended to provide that the periods shall commence from the first discovery thereof by the prosecutor is plainly not open to the offender infringing the provisions of the Trade & Merchandise Marks Act under Section 92 The period has to be computed for the purpose of the first part of the section from the date of the commission of the offence charged, and under the second party from the date of discovery of the

offence charged, and not from the first discovery or infringement of trade-mark by the prosecutor.

Note: – The appellant was charged with being on Nov, 25 1960 in possession of counterfeit labels for sale of tobacoo tin being counterfeit trade marks of the genuine "Title" brand which were being brought in the market since 1955 but report was lodged in 1960, but was within two years of discovery.

Note:—Appeal was dismissed.

Ram Kishore Vs State of Uttar Pradesh
A.I.R. 1966 S.C. 1820 (Page 1823) : 1966 Cri. L J. 1500

Transaction

Please see:—'Same Transaction' at Page 448

Transfer

(i) Where application containing allegations against a trial magistrate is made to the District Magistrate, the latter is entitled to use his powers under S.528 Cr.P.C. and to send the application in the normal and usual course of his functions to the Magistrate concerned for remarks.

Rizwan-ul-uasan and another Vs The State of Uttar Pradesh
A.I.R. 1953 S.C. 185 : 1953 Cri. L J. 911

(ii) Justice should appear to be done as that it is, in fact, done.

Note:—The petitioner has been convicted of an attempt to muder by poisoning ing Mr. Medappa, the Chief Justice of Mysore on whose complaint the proceedings were instituted.

He now prays for a transfer of the appeal to some other High Court as he apprehends that he will not have a fair and impartial hearing of the appeal in the Mysore High Court which is presided over by the complainant. This is obviously weighty ground for the transfer of the case.

L.S. Raju Vs State of Mysore
A.I.R. 1953 S.C 435 : 1953 Cri. L.J. 1833

(iii) The Supreme Court has no power under section 527 Cri. P.C. to transfer contempt proceedings pending before High Court- Such proceedings of contempt are not governed by the criminal procedure Code.

Sukhdev Singh Vs Hon ble. C J.S. Teja Singh
A.I.R. 1954 S.C. 186 : 1954 Cri. L J. 456

(iv) The ground that the Magistrate (trying the case) has already decided one complaint against the petitioner, is no ground for transfer of the case as it is not sufficient to create a reasonable apprehension in the minds of the **Petitioner.**

G.X. Francis and others Vs Banke Bihari Singh and another
A.I.R. 1958 S.C. 309 : 1958 Cri, L.J. 569

(*Transfer-contd*)

(v) Justice must be seen to be done. Where there is unanimity of testimony from both sides about existence of communal tension. The machinery of justice can not gear to work in the midest of such conditions. It is a good ground for transfer of the case.

G.X. Francis and others Vs Banke Bihari Singh and another
A.I R. 1958 S.C. 309 : 1958 Cri. L.J. 569

(vi) Transfer of case by a magistrate before congnizance is taken for disposal will not be a transfer of a case under Section 192 Cr.P,C. Such sending of a case is by way of an administrative action.

Gopal Dass Sindhi Vs State of Assam
A.I.R. 1961 S.C. 986

(vii) The provisions of section 526 of the Cr.P.C. empowering the High Court to transfer any case from a criminal court subordinate to it to any other court competent to try it apply to the case pending before the special judge.

Ram Chandra Prasad Vs State of Bihar
A.I.R. 1961 S.C. 1629 : 1961 (2) Cri. L.J. 811

(viii) In proceedirgs under S.528 Cr.P.C. it should be known that the Court does not examine witnesses in support of allegations of fact made by either side. Ordinarily the Court acts upon the affidavit of one side or that of the other. But if one side omits to make an affidavit in reply, the affidavit of the other side remains uncontroverted.

Note:—In this case Chief Minister S. Partap singh Kairon, S.S.P. Amritsar and the son of the Chief Minister i,e. Surinder Singh were against the petitioner. This fact mainly moved the Hon'ble Judges of the Supreme Court and cases were transferred from Punjab State.

Hazara Singh Gill Vs State of Punjab
A.I.R. 1965 S.C. 720 : 1965 (1) Cri. L.J. 639

(ix) See ; 'District Magistrate' at page 161 and 'Notification (iii)' at page 319.

Ajaib Singh Vs Gurbachan Singh and others
A.I.R. 1965 S.C. 1619

(x) The Supreme Court in exercise of its jurisdiction and power under Section 527 of the Code of Criminal Procedure can transfer a case from a Special Judge subordinate to one High Court to another Special Judge subordinate to another High Court,

Gurcharan Dass Chadha Vs State of Rajasthan
A.I.R. 1966 S.C. 1418 : (Para II) : 1966 Cri. L.J. 1071

(xi) A case is transferred if there is a reasonable apprehension on the part of a party to a case that justice will not be done. A petitioner is not required to demonstrate that justice will inevitably fail He is entitled to a transfer if he shows circumstances from which it can be inferred that he entertains an apprehension and that it is reasonable in the circumstances alleged. It is one of the principles of the administration of justice that justice **should note only be done but it should be seen to be done.** However, a mere allegation that there is apprehension that justice will not be done in a given case does not suffice. The Court has further to see whether the apprehension is reasonable or not. To judge of the reasonableness of the apprehension the state of mind of the person who entertains the apprehension is no doubt relevant but that is not all. The apprehension must not only be entertained, but must appear to the Court to be a reasonable apprehension.

Note :—The Petitioner was a member of an All India Service and was serving as Superintendent of Police when case was registrep against him. He incurred hostalities of Law Minister I, G. and A.I.G. Police Rajasthan (as alleged) In support of his petition he referred to many incidents and filed many documents.

Held :—There is a possiblity that the Petitioner entertains an apprehension that certain persons are hostile to him but his apprension that he will not receive justice in Rajasthan is not reasonable.

Gurcharn Dass Chadha Vs State of Rajasthan
A.I.R. 1966 S.C. 1418 : 1966 Cri. L J. 1071

Transfer of Case

The High Court is competent under Section 526 (i) (ii) of the Code to transfer a case from the Court of a Magistrate to the court of Sessions Judge or Additional Sessions Judge.

P.C. Gulati Vs Lajya Ram
A.I R. 1966 S.C. 595

Transfer of Earlier Statement

(xii) Please See **'Earller Statement' at Page 171.**

Periyasami Vs State of Madras
A.I.R. 1967 S.C. 1027 : 1967 Cri. L.J. 975

Transfer of statement

See : Statements.

Sharnappa Mutyappa Halke Vs Uhe State of Maharastra
A.I.R. 1964 S.C. 1357 : 1964 (2) Cri. L J. 359

Transmission

A delay of several months in delivering a postal article to the addressee would not mean that the article has ceased to be 'in course of transmission'

Radha Kishan Vs State of Uttar Pradesh
A.I.R. 1963 S.C. 822 : 1963 (1) Cri. L.J. 809

Transportation

The word "transportation" was not defined in the Indian Penal Code But it was for life with two exceptions. After considering the history of the sentence of transportion, the relevant provisions of the Indian Penal Code of Criminal Procedure and the Prisons Act, the Privy Council came to the conclusion that the said provisions made it plain that when a sentence of transportion had been passed it no longer necessarily a sentence of transportation beyond the seas. Whatever justification there might have been for the contention that a person sentenced to transportation could not be legally made undergo rigorous imprisonment in a jail in India except temporarily till he was so transported, subsequent to the said amendment there is none. Under that section, a persons transported for life or any other term before the enact ment of the said section would be treated as a person sentenced to rigorous imprisonment for life or for the said term.

Gopal Vinayak Godsa Vs The State of Maharashtra
A.I.R. 1961 S.C. 600 : 1961 (I) Cri. L J. 736

Trap

(i) It cannot be laid down that the laying of traps must be prohibited.

Note :—See 'Magistrate' at page 291 and 'Raiding party' at page 410 .

Ram Kridan and another Vs State of Delhi
A.I.R. 1956 S.C. 476 : 1956 Cri. L.J. 837

(ii) Where there is no trap in the usual way, for a man who was demanding a bribe but of deliberately tempting a man to his own undoing after his suggestion about breaking the law had been finally and conclusively rejected with considerable emphasis and decision.

Note : —The accused was tempted by the Police. Whatever the criminal tendencies of a man may be, he has a right to expect that he will not be deliber ately tempted beyond the powers of his frail endurance and particularly by those who are the gaurdian of the law. Appellant was acquitted.

Ramjanam Singh Vs The State of Bihar
A.I.R. 1956 S.C. 643 · 1956 Cri. L.J. 1254

Travelling Allowance

Travelling allowance is not possibly be alleged to be a very substantial source of income. The prosecution would not be justified in concluding that travelling allowance was also a source of income when such allowance is concerned for his out-of.pocket expenses incidental to journey performed by him for his official tours,

C.S D. Swami Vs The State
A.I.R. 1960 S.C. 7 : 1960 Cri. L.J. 131

Trial

Supreme Court would not be prepared to keep persons who are on trial for their lives under indefinite suspension because trial judge omits to do their duty. Justice is not one sided.

Note :—In this case there was defective examination of the accused under S 342 Cr. P.C. The case was not remanded as a long period during trial had elapsed, so appeal was accepted.

Machander Vs The State of Hyderabad
A I.R 1955 S.C. 792 · 1955 Cri L J. 1644

(ii) Trial in respect of offences some of which are trial with jury and others with assessors

Held :—That the Session Judge had no jurisdiction to refer the whole case to the High Court under S. 307 Criminal Procedure Code

Note :—See further 'Jury' and 'Jury trial' at pages 274 and 275

Chandi Prasad Singh Vs The State of Uttar Pradesh
A.I.R. 1956 S.C. 149 . 1956 Cri L J. 322

(iv) The plain meaning of the phrase "every person" is that it comprehends all persons without limitation and irrespective of nationality, allegiance, rank, status, caste, colour and creed. On a plain reading of S 2 of the Panal Code, the Code does apply to a foreigner who has committed an offence within India notwithstanding that he was corporeally present outside. Even on the assumption that the appellant has ceased to be an Indian citizen and was a Pakistani national at the time of the commission of the offence, he must be held guilty and punished under the Indian Penal Code notwithstanding his offence not being corporeally present in India at the time.

Mobarak Ali Ahmed Vs The State of Bombay
A.I.R. 1957 S.C. 857 : 1957 Cri L J. 1346

(v) Persons accused of sevaral offences and persons accused of abetment of those offence, thereof can be tried together.

K. Satwant Singh Vs The State of Punjab
A.I R. 1960 S.C. 266 : 1960 Cri. L I. 410

(vi) Misrepresentation by accused at Simla and the property delivered at Lahore accused can be tried for offence of cheating either at Simla or at Lahore., Consequently, 'H' being abettor, is to be tried either at Simla or Lahore.

Note:—The case of these accused was allotted to the Special Tribunal at Lahore and would have normally been tried there, but for the partition of India, the trial, under the authority of law was concluded at Simla. There seems, therefore, to have been no illegality committed in trying the appellant and 'H' together at Simla.

K. Satwant Singh Vs State of Punjab
A.I.R. 1960 S C. 266 :1960 Cri. L.J. 410

(*Trial-contd*)

(vii) An offence under S 448 Penal Code is a summon case. If the magistrate adopts the procedure prescribed for a case triab e as a warrant case, he commits an irregularity, which does not vitiate the proceedings and is curable by the provisions of Section 537 Cr.P C. when no prejudice to the accused is established.

Gopal Dass Sindhi Vs State of Assam
A.I.R. 1961 S.C. 986

(viii) Under S.406, Indian Penal Code was with respect to the commission of breach of trust of a sum of Rs.2, 18, 369/-between the period March 6 of 1949 and June 30, 1950. The charge framed contravened the provisions sub-sec (2) of S 222 of the Code which allowes a combined charge with respect to the amount embezzled within a period of a year.

Held—This defect in the charge, however, did not lead to any prejudice to the accused in the trial and therefore, did not vitiate the trial, in view of the provisions of S 537 of the Code. Moreover the charge could have been split up into two charges, one with respect to the offence of criminal breach of trust committed with respect to the amount embezzled between March 6, 1949 & March 5, 1950 & the other with respect to the amount embezzled between March 6,1950 and June 30. 1950. The two offences of criminal breach of trust could have been tried together in the present case as, the offences were said to have been committed in pursuanee of the criminal conspiracy entered into by the accused.

The State of Maharastra Vs Umar saheb Bwan Saheb Inamdar and others
A.I.R. 1962 S C. 1153 : 1962 (2) Cri. L.J. 259

(ix) The procedure of recording evid nce with respect to the offences which are subject of different trial alone is not warranted by the provisions of the criminal procedure code.

Banwari and another Vs State of Uttar Pradesh
A.I.R. 1962 S C. 1198 : 1962 (2) Cri. L.J. 278

(x) The court having the jurisdiction of trying the offence of conspiracy has also jurisdiction to try an offence constituted by the overact which are committed, in pursuance of the conspiracy, beyond its jurisdiction.
1961 S C. 1582 relied upon.

B K. Dalmia and others Vs The Delhi Administration
A.I.R. 1962 S.C. 1821 : 1962 (2) Cri. L.J. 805

(xi) Section 234 of Cr P.C. is an enabling provision and is an exceptian to section 233 Cr.P.C. if each of the several offences is tried separately, there is notheing illegal.

Ranchhod Lal Vs State of Madhya Pradesh
A.I.R. 1965 S.C. 1248 : 1965 (2) Cri. L J. 253

Note:—Kindly See also Joint trial' at page 265 and 'jurisdiction' at page 268 to 273.

(xiii) Where the Magistrate forms an opinion that no case exclusively triable by a Court of Session is disclosed but a less serious offence which it is within the competence of the Magistrate to try is disclosed, the Magistrate has to proceed to try the accused himself or send him for trial before another magistrate.

Ramekbal Tiwary Vs Madan Mohan Tiwari
A.I.R. 1967 S C. 1156 . 1967 Cri. L J. 1076

Trial without Sanction

(xiv) Where the trial of the appellant upto certain stage proceeded with a public servant (Henderson) and then the case of the public servant was separated and the appellant was tried alone, there was no question of any sanction of the central government being obtained under S. 197 of the code of criminal procedure so the trial without sanction is valid.

Note: –There are even no reasons for ordering a denovo trial.

Bakhshish Singh Dhaliwal Vs The State of Punjab
A.I.R. 1967 S.C. 752 : 1967 Cri L J. 656

Note : (ii)—Pl. further See 'Sanction'.

Trivial Nature

(i) It is not strange if the act intended to impose a heavier punishment for a second offence, which might be of a trivial nature, while the first offence, which might have been of a serious nature, entailed a lighter punishment.

Note.—This contention of the defence was declared fallacious and the appeal was rejected.

Jagdish Prashad Vs The State of Uttar Pradesh
A.I.R. 1966 S.C. 290 : 1960 Cri. L.J. 194

(ii) There is no force in the contention that if the wrong done was of a very trival nature, the rendering of compensation would in the eye of law be sufficient to redress it and would put an end to the matter without any reflection on the character of the person charged.

When a person is charged with an offence, then unless there is some provision for composition of it the law must take its course and the charge enquired into resulting either in convicition or acquittal.

Biswahahan Dass Vs Gopen Chandra Hayarika
A.I.R. 1967 S C. 895 ' 1967 Cri. L.J. 828

Trustee

Directors are not only agents but in some cases and to some extent are in the position of trustees.

R.K. Dalmia and others Vs The Delhi Administration
A.I.R. 1962 S.C. 1821 : 1962 (2) Cri. L. J. 805

"U"

Ultravires

Rule 30 (1) (b) of the Defence of India Act cannot be said to be ultravires the section 3(2) (15) (i) of the Defence of India Act for the reason that it does not state that the satisfaction of the authority making the order of detention has to be on grounds appearing to it to be reasonable.

The rule requires only that the detaining authority must be satisfied that the detention is necessary for the purposes mentioned and that is what the latter part of section under which it was made also says. The rule has clearly been made in terms of the section authorising it.

P.L. Lakhan pal Vs Union of India
A.I.R. 1967 S.C. 243 (February Part) : 1967 Cri L.J. 282

Unconstitutional

Section 29 of the Arms Act (187) is wholly Unconstitutional and void and contravene Art-14 of the Constitution while sections 14(F) of the same Act is not void. Both sections are severable.

Bhagwana Vs Uttar Pradesh, Jai Lal Vs The Delhi Administration
A.I.R. 1962 S.C 1781

Undergone

See:—'Sentence' and 'Woman'.

Undue Advantage

It is impossible to say that there was no undue advantage when the accused stabbed the unarmed person who made no threatening gesture and merely asked the accused's opponent to stop fighting. Then also, the fight must be with the person who is there. Here the fight was between V. third Person and the accused The exception, therefore, does not apply.

Narayanan Nair Raghavan Nair Vs The State of Travancore cochin
A.I.R. 1956 S.C 99 . 1956 Cri. L.J 278

Unidentified assailant

(i) If evidence shows that the persons before the Court alongwith unidentified and unnamed assailants or members composed an unlawful assembly. those before the Court can be convicted under S.149 I.P.C. though the unnamed and unidentified persons are not traced. There is no legal bar preventing the court of facts from holding that though the charge specified only five or more persons, the unlawful assembly in fact was consisted of other persons who were not named and identified.

Mohan Singh Vs State of Punjab
A.I.R. 1963 S.C. 174 : 1963 (1) Cri. L.J. 100

(ii) **Note;**—See 'identification' at Page 225, 226

Unlawful assembly

(i) Two appellants alongwith the other five accused who have been acquitted by the High Court found unlawful assembly and committed murder. Section 149 I.P C has been rightly made applicable as the acquitted person were unknown unidentified but the number of attackers was specified seven i.e. more than five. So the conviction shall stand.

Mara Chalil Pakku Vs State of Madras
A.I.R. 1954 S.C. 648 : 1954 Cri. L.J. 1668

(ii) An assembly which was lawful when it assembled, can become unlawful subsequently. Previous concert is not necessary. The common object required by section 141 differs from the common intention required by section 34 in this respect.

Moti Das Vs The State of Bihar
A.I.R. 1954 S.C. 657 : 1954 Cri. L.J. 1708

(iii) A free fight is "when both sides mean to fight from the start', go out to fight and there is a pitched battle. The question of who attacks and who defends in such a fight is wholly immaterial and depends on the tactics adopted by the rival commanders."

Note:—There can be no question of a free fight in the present case, as there is a clear finding of the High Court that Anjaninandan' party were the aggressors Having regard to the finding reached by the High Court that the riot took place at the narrow path as a result of the dispute about the Nepali pilgrim and the further fact that Gajanand's party received more injuries, one of which was fatal, it is obvious that Gajanand's party cannot be said to have constituted an unlawful assembly. Gajanand's party was engaged in the peaceful pursuit of worship at their own takhat and was busy attending to the Puja for the Nepali pilgrim. It is not suggested that at

that point of time they were members of an unlawful assembly. There is no material to justify the conclusion that they became members of the unlawful assembly at any time thereafter.

It was the party of Anjaninandan who left their place and came to Gajanand's takhat, presumably raising a dispute over the offerings made by the Nepali pilgrim. They came armed with deadly weapons and one of them inflicted a severe blow on Sukhu which resulted in his death and other received as many as 27 Serious injuries In these circumstances it is not possible to suggest that both parties were pre-determined for a trial of strength and had free fight. Gajanand's party was the worst sufferers and though they also inflicted injuries on the other side, they did so in the exercise of their right of self-defence.

Gajanand Vs State of Uttar Pradesh
A.I R. 1954 S.C. 695 : 1954 Cri L.J. 1746

(iv) Mere presence in an assembly does not make such a person a member of an unlawful assembly unless it is shown that he had done something or omitted to do something which would make him a member of an unlawful assembly, or unless the case falls under section 142 I.P.C.

Note:—The place of occurrence is surrounded on all side by the houses of the appellants. If members of the family of the appellants and other residents of the village assembled, all such persons could not be condemned 'ipso facto' as being members of that unlawful assembly. It was necessary, therefore, for the prosecution to lead evidence pointing to the conclusion that all the appellants had done or been committing some overt act in prosecution of the common object of the unlawful assembly.

Baladin and others Vs The State of Utter Pradesh
A.I.R. 1956 S.C. 181 : 1956 Cri. L.J. 345

(v) If the Court below can legally find that the actual numbers of members in the appellant's party were more than five, the appellant's party will constitute an unlawful assembly even when only three persons have been convicted. It is only when the number of the alleged assailants is definite and all of them are named, and the number of persons found to be proved to have taken part in the incident is less than five, that it cannot be held that the assailants' party must have consisted of five or more persons. The acquittal of the remaining named persons must mean that they were named, excludes the possibility of other persons to be in the appellant's party.

Kartar Singh Vs State of Punjab
A.I.R. 1961 S.C. 1787 : 1961 Cri. L.J. 853

Note:—'Kindly see 1953 S.C. 364, 1954 S.C. R. 145.

(Dalip Singh Vs State of Punjab)

(vi) If out of the six persons charged Under S. 149 of the Penal Code alongwith other offences, two persons are acquitted, the remaining four may not be convicted because the essential requirement of an unlawful assembly might be lacking.

Sunder Singh and others Vs The State of Punjab
A.I.R. 1962 S C. 1211 : 1962 Cri. L.J. 290

(vii) Where a crowd of assailants who are members of an unlawful assembly proceeds to commit an offence of murder in pursuance of the common object of the unlawful assembly, it is often not possible for witnesses to describe accurately the part played by each one of the assailants. Besides, if a large crowd of persons armed with weapons assualts the intended victim it may not be necessary that all of them have to take part in the actual assault. In the present case, for instance, several weapons were carried by different members of the unlawful assembly, but it appears that the guns were used and that was enough to kill 5 persons In such a case, it would be unreasonable to contend that because the other weapons carried by the members of the unlawful assembly were not used, the story in regard to the said weapons itself should be rejected

Malsalti and others Vs State of Uttar Pradesh
A.I.R. 1965 S.C. 202 : 1965 Cri. L.J. 226

(viii) That mere presence in assembly does not make a person, who is present, a member of an unlawful assembly unless it is shown that he had done something or omitted to do something which would make him a member of an unlawful assembly.

A.I.R. 1965 S C. 202 : 1965 Cri. L J. 226

(ix) The conduct of the members of the unlawful assembly both before and after the commission of the offence has been considered by the courts below and it has been held that in order to suppress such fantastic criminal conduct on the part of villagers it is necessary to impose the sentences of death on 10 members of the unlawful assembly who were armedwith fire Arms.

A.I·R. 1965 S.C. 202 : 1965 Cri. L.J. 229

(x) It is not obligatory to charge a person under Section 147 or 148 Indian Penal Code before Section 149 I P.C. can be utilized. If a person is not charged under Section 147 I.P C it does not mean that Senction 149 I P.C. cannot be used. Sections 143, 146, 147 & 148 are implied when Section 149 I.P.C. is appiled on the facts of the case.

Mahadev Sharma & Others Vs State
A.I.R. 1966 S.C. 302 : 1966 Cri. L.J. 197 1965 S.C.D. 1160

Unsoudness

See : Burden at (iv, xi) at page 48D Burden of proof (ii) 48E
See : Insanity
See : Hallucination at page 221

"V"

Vagne

(i) A layman who is not experienced in the interpretation of documents, can hardly be expected without legal aid, which is denied to him, to interpret the grounds in the proper sense. It is, therefore, upto the detaining authority to make his meaning clear beyond doubt, without leaving the person detained to his own resource for interpreting them. Otherwise such ground would be regarded as vague as to render it difficult for the petitioner to make represe-ntation. Each of the grounds communicated to the person detained must be sufficient to enable him to make a representation which on being consider-ed may give relief to him where it has not been done in regard to even one of the ground, the petitioner detention cannot be held to be in accordance with the meaning of Art. 21 and he is therefore, entitled to be released.

Note·—On the question of vague grounds the petition was allowed.

Dr. Ram Krishan Bhardwaj Vs State of Delhi and others
A.I.R. 1953 S.C. 318 : 1953 Cri. L J. 1241

(ii) Vagueness is a relative term. Its meaning must vary with the facts and circu-mstances of each case What may be said to be vague in one case, may not be so in another, and it could not be asserted as a general rule that a ground is necessarily vague if the only answer of the detained person can be to deny it. If the statement of facts is capable of being clearly understood and is sufficiently definite to enable the detained persons to make his representation, it cannot be said that it is vague. Further, it cannot be denied that particulars of what has taken place, can be more definitely stated than those of events which are yet in the offing. In the very nature of things, the main object of the Act is to prevent persons from doing something which comes within the purview of any one of the sub-clauses of cl.(a) of section 3(1) of the Act.

Note;—The contention raised was that the grounds contained in para 4, are vague

and indefinite, not enabling the person detained to make his representation. It will appear from the paragraph aforesaid that the petitioner intended to proceed to Delhi on October 9, 1958, with a view to instigating plans against the personal security of the Prime Minister. It is clear that the place, date, and purpose of the planned nefarious activity, have all been stated as clearly as could be expected. But it was argued that it was also necessary to state the details of the plan to be hatched in Delhi.

Held —From the nature of the fact that it was not an event which had already happened but what was apprehended to be in the contemplation of the detenu and his associates, if any, so no further details of the plan could possibly be disclosed.

Naresh Chander Ganguli for Shri Ram Prasad Das Vs The State of West Bengal & Others
A.I.R. 1959 S.C. 1335 : 1959 S C Cri L.J. 1501

(iii) Where the charge does not specify the manner and the mode in which the cheating has been done, it is vague, but the vagueness of the charge is only an irregularity and does not vitiate the trial unless the accused is materially prejudiced thereby.

Note:—See also A I.R. 1962 S C. 1821 or 1962(2) Cri.L.J. 805

K. Damodaran Vs The State of Travancore Cochin
A.I.R. 1953 S.C. 462 : 1953 Cri. L.J. 1928

Vague ground

(iv) The obligation of the government to furnish grounds which are not vague cannot be taken to mean that they must furnish meticulous detail.

A.I.R 1965 S C. 631

Value

Value of the extra judicial confession depends upon the veracity of the witness to whom it is made.

Mulk Raj Vs The State of U.P.
A.I.R. 1959 S.C. 902 : 1959 Cri L.J. 1219

Verdict of Jury

The High Court under S.307 I.P.C will only interfere with the verdict of the Jury if it finds the verdict "perverse in the sense of being unreasonable" "maintfestly wrong" against the 'weight of evidence'. If the facts and circumstances of the case are such that a reasonable body of men could arrive at the one conclusion or the other, it is not competant to the Sessions judge or the High Court to substitute their verdict in place of the verdict which has been given by the jury. The jury are the sole Judges of the facts and

it is the right of the accused to have the benefit of the verdict of the jury Even if the Sessions Judge or the High Court would if left to themselves have arrived at different verdict it is not competent to the Sessions Judge to make a reference nor the High Court to accept the same and substitute their own verdict for the verdcit of the jury provided the verdict was such as could be arrived at by a reasonable body of men on the facts and circumstances of the case.

Note:—Six out of the nine jurors came to the conclusion that the Appellant was not guilty of the offence with which he was charged. Three out of the nine jurors came to an opposite conclusion and it is impossible in the circumstances of the case for the court to characterise the one or the other of the conclusions reached by the members of the jury as perverse in the sense of being unreasonable or manifestly wrong or against the weight of evidence.

Held: —The verdict reached by the majority was certainly a verdict which upon the evidence on record a reasonable body of men could have reached and the reference was not competent.

Note—The appeal was allowed and the appellant was set at liberty.

-khdakli Hayatalli Vs. State of Bombay
A.I.R. 1954 S.C. 173 : 1954 Cri. L. J. 451

(ii) Verdict of jury causing a disagreeable surprise to the Judge, but that itself can be no justification for characterising the verdict as perverse.

Chittaranjan Das Vs State of West Bengal
A I.R. 1963 S.C. 1696 1963 Cri L.J. 534

Note:—See further 'Jury' and 'Jury trial' at pages 274 and 275.

Vindictive

The exercise of the right of private defence must **never** be vindictive or malicious

Jai Devand Hari Singh Vs State of Punjab
A.I R. 1963 S.C. 612 : 1963 Cri. L J. 495

Violence

The Violence which the citizen defending himself of his property is entitled to use must not be unduly disproportionate to the injury which is to be averted or which is reasonably apprehended and should not exceed its legitimate purpose.

Jai Devand Hari Singh Vs State of Punjab
A I.R 1963 S.C. 612 : 1963 (1) Cri. L.J. 495

Vital Part

(i) Induries on the head or the neck are on the vital part of the body while on the shoulder it is not on vital part,

B.N. Srikantiah (2) Siddiahand another Vs State of Mysore
A.I.R 1958 S.C. 672 .1958 Cri. L. J. 1251

Vital Region

The mere fact that the injury actually inflicted by the appellant did not cut any vital organ, is not by itself sufficient to take the act out of the purview of S.307.

Sarju Prasad Vs State of Bihar
A.I.R. 1966 S.C. 843 : 1965(1) Cri. L.J. 766

Voice

Where the accused is intimately known to the witness and for more than fortnight before the date of the offence he had met the accused on several occasions in connection with the dispute about the field. It is true that the evidence about indentification of a person by the timbre of his voice depending upon subtle variations in the overtones when the person recognising is not familiar with the person recognised may be some what risky in a criminal trial.

Held·—It cannot be said that indentification of the assailant by Rakkha Singh, from what he heard and observed was so improbable that Supreme Court would be justified in disagreeing with the opinion of the trial Court which saw the witness and formed its opinion as to his credibility and of the High Court which considered the evidence against the appellant and accepted the testimony.

Kripal Singh Vs the State of Uttar Pradesh
A.I.R. 1965 S.C. 712 .1965 (1) Cri. L.J· 636

Voluntary

(i) Confession must be affirmatively proved that such confession was free and voluntary and that it was not preceded by any inducement to the prisoner to ake a statement held out by a person in authority or that it was made until after such inducement had clearly been removed. But a mere bald assertion by the prisoner that he was threatned, tutored or that inducement was offered to him, cannot be accepted as true without more.

Hem Raj Devilal Vs The State of Ajmer
A.I R. 1954 S C. 462 : 1954 Cri. L.J. 1313

(ii) Rejection of the accused's suggestions as unfounded does not relieve the prosecution from its duty of positively establishing that the confession was

voluntary and for that purpose it is necessary to prove the circumstances under which this unusual step was taken.

Nathu Vs State of Uttar Pradesh
A.I.R. 1956 S.C. 56 : 1956 Cri. L.J. 152

(iii) In the absence of any evidence to show that any threat, promise or inducement was made to the accused and when the interrogation took 2/3 hours does not make his confession one other than free and voluntary.

Shri Harish Chand Vs Collector of Amritsar and another
A.I.R. 1959 S.C. 18 : 1959 Cri. L.J. 108

"W"

War Diaries

Under S. 35 of the Evidence Act.

Documents admissible are not only public documents, but also records of official acts. There can be no doubt that war Diaries which have been used as evidence, were records of official acts and in fact, there is specific evidence of witnesses that these were required to be maintained under the rules applicable to the units of the army which maintained these diaries.

So such diaries are records of official acts and are therefore, admissible in evidence.

Bhakhshish Singh Vs State of Punjab
A.I.R. 1967.S. C. 752 (May Part) :1967 Cri.L.J. 655

Warrants

A Search by itself is not a restriction on the right to hold and enjoy property. No doubt a seizure and carrying away is a restriction of the possession and enjoyment of the property seized. This, however is only temporary and for the limited purpose of investigation. A search and seizure is only a temporary interference with the right to hold the premises searched and the articles seized. Statutory regulation in this behalf is a necessary and reasonable restriction and cannot 'per se' be considered to be uncondional. The damage if any, caused by such temporary interference if found to be in excess of legal authority is a matter for redress in other proceedings. So there is no question of violation of Art. 19 (1) (f) is involved in this case in respect of the warrants in question which purports to be under the first alternative of S. 96 (I) of the Criminal P. C.

M. P. Sharma and others Vs Satish Chandra District Magistrate
A.I.R. 1954 S. C. 300 1954 Cri. L. J. 865

Warrant Case

An offence under S. 448 Penal Code is a summon case. If the magistrate adopts the procedure prescribed for a case triable as a warrant case, he commits an irregularity, which does not vitiate the proceedings and is curable by the provisions of section 537 when no prejudice to the accused is established.

Gopal Das Sindhi and others Vs State of Assam and another
A.I.R. 1961 S.C. 986

(ii) Sec Further '**Summon case.**'

Warrant of Possession

Persons who enter into the fields of which the possession was to be taken under the warrants of execution for delivery of possession issued by the Court, do not commit any criminal tresspass even though the date for the execution of the warrants had already expired.

Smt. Mathri and others Vs State of Punjab
A.I.R. 1964 S. C. 986 1964 L. J. 57

Wilful (a)

The word wilful as used by the legislature is to mean only such detention which was deliberat end for some purpose

Facts:—The appellant, who was a registration clerk in the Haveri Post Office in the Mysore state, was tried by the Sessions Judge, Dharwai, on charges under S. 52, S.53 and S. 55 of the Indian Post Office Act. The prosecution case is is that on the 18th October, 1955 a registered letter containing half portion of a ten rupee note and a petition on behalf of one Muppayeagonda asking for the said note to be exchanged for a fresh note was received at the Haveri Post Office at 4-30 p.m. from the Branch Post Office at Kabbur. The appellant who was a registration clerk at Haveri at the time, however, detained the registered envelope instead of despatching it that very day as he should have done. He despatched it the next day.

Held:—That the detention was not deliberate and on purpose but as a result of either inadvertence or carelessness or negligence. So the appellant cannot be said to have detained or delayed the article wilfully.

Note:—Appellant was set at liberty

Romchandra Narasimha Kulkarni Vs State of Mysore
A.I R. 1964 S.C. 1701 : 1964 Cri. (2) L.J. 609

Wilful

Please See 'Rash & Negligent Act' at page 413.

Wilful disobedience

See contempt of Court (viii) at page 109

Withdrawal (a)

In very class of cases other than those tried by Jury, the withdrawal can be at any stage of the entire proceedings. This would include also the stage of preliminary enquiry in a Session case triable without a jury.

(a) The Section 494 Cr. P.C. gives no indication as to the grounds on which the Public Prosecutor may make the application, or the considerations on which the Court is to grant its consent. In understanding and applying the section, two main features have to be kept in mind. The initiative is that of the Public Prosecutor and what tthe Court has to do is only to give its consent and not to determine any matter judicially. It cannot be said that where the application is on the ground of inadequacy of evidence requiring judicial consideration, it would be manifestly improper for the court to consent to withdrawal before recording the evidence and taking it into consideration.

(b) It cannot be said that the case triable by a court of Sessoin, an application by the Public prosecutor for withdrawal with the consent of the Court does not lie in the committal stage.

Note:—These appeals arise out of an order of discharge passed by the Subordinate Judge Magistrate of Dhanbad under S.494 Criminal P.C., on his consenting to the withdrawal of the Public Prosecutor from a prosecution pending before him.

Note II:—Order of the trial court was restored and that of the High Court was set aside.

Mahesh Desai Vs Ram Naresh Pandey and another
A.I.R. 1957 S.C. 389 : 1957 Cri. L.J. 567

Withdraw

It is only the public prosecutor, who is in charge of a particular case and is actually conducting the prosecution, can file an application under that section, seeking permission to withdraw from the prosecution. If a public prosecutor is not in charge of a particular case and is not conducting the prosecution, he will not be entitled to ask for withdrawal from the prosecution, under S.494 of the code

Further:—where the prosecution is being conducted by the complainant, viz., the first respondent, the public prosecutor is not entitled to file an application for withdrawal.

(This question of public prosecutor's powers arose in respect of a complaint, filed by a private person and which was being prosecuted by him as such).

State of Punjab Vs Surjit Singh and another
A.I.R. 1967 S. C. 1214 (August part) : 1967 Cri. L.J. 1084

(ii) Note:—See 'Public Prosecutor at page 399

(iii) Private Complainant has no locus standi to file Revision against the order of withdrawal of a Case U/s 494 Cr. Pc.

A.I.R. 1957 S.C. 389 : 1957 Cri. L.J. 567

With-holding

Biabani who was a top-ranking police officer and was present at the scene was a material witness in the case and it was the bounden duty of the prosecution to examine him, particularly when no allegation was made that if produced, he would not speak the truth; and in any case, the court would have been well advised to exercise its discretionary powers to examine that witness. The witness was at the time of the trial in charge of the Police Training School and was certainly available. Not only does an adverse inference arise against the prosecution case from his non-production as a witness in view of illustration (g) to section 114 of the Indian Evidence Act, but the circumstances of his being withheld from the Court casts a serious reflection on the fairness of the trial.

Held—The appellant was considerably prejudiced in his defence by reason of this omission on the part of the prosecution and on the part of the Court.

Note:—The appeal was allowed

Habeeb Mohammad Vs State of Hyderabad.
A.I.R 1954 S. C. 51 : 1954 Cri. L. J. 338

(ii) The test whether a witness is material for the purposes of case isnot whether he would have given evidence in support of the defence. The test is whether he is a witness "essential to the unfolding of the narrative on which the prosecution is based". Whether a witness is so essential or not would depend on whether he could speak to any part of the prosecution case or whether the evidence led disclosed that he was so situated that he would have been able to give evidence of the acts on which the prosecution relied.

It is not however, that the prosecution is bound to call all witnesses who may have seen the occurrence and so duplicate the evidence. But apart from this, the prosecution should call all material witnesses.

Held:—Since according to the prosecution case Raghbir arrived after the alleged offences were committed, he could not have given any material evidence about the prosecution case. So non Production of this witness is not fatal.

Narain and others Vs State of Punjab
A.I R. 1959 S.C. 484 : 1959 Cri. L.J. 537

Note:—The appeal was dismissed.

Witness

See:—Interested Witnesses 248
(ii) Partisan Witnesses at page. 341
(iii) Material Witnesses at page. 297
(iv) Numberof Witnesses at page. 320

Witness

(i) Witnessing the occurrence from the distance of 2 or three paces when one accused is armed with gun is highly improbable as the accused with gun would not have allowed to have the full view of the occurrence.

Note:—Such evidence was not relied upon and the appellants were acquitted of charges of murder.

Wilayat khan and others Vs State of U.P.
A.I.R. 1953 S.C. 122 : 1953 Cri. L.J. 662

(ii) The corroboration that is required in the case of evidence of a witness who is the relation of the deceased in a murder case is not what would be necessary to support the evidence of an approver but that would be sufficient to lend assurance to the evidence before the court and satisfy the court that the particular persons were really concerned in the murder of the deceased.

Karnail Singh and another Vs State of Punjab
A.I.R. 1954 S.C. 204 : 1954 Cri. L.J. 580

(iii) A Witness cannot be contradicted by first supposing that a certain thing must have taken place in a manner not deposed to by the witness and then to find that that was not consistent with the statement made by that witness.

R.K. Dalmia and others Vs The Delhi Administration
A.I.R. 1962 S.C. 1821 1962 (2) Cri L J. 805

(iv) A mere consideration that remaining witnesses (not produced) might have given a further description of how things happened would not justify the conclusion that the omission to examine them was an oblique motive and goes to benefit the accused.

R.K. Dalmia and others Vs The Delhi Administration
A.I.R. 1962 S.C. 1821 : 1962 (2) Cri. L.J. 805

(v) Where a Witness has resiled from his evidence in committing court and the evidence has been brought in under section 288 Cr.P.C, then before such evidence is accepted satisfaction about its being true and reliable is necessary.

Sharnappa Mutyappa Halke Vs The State of Maharastra
A.I.R. 1964 S.C. 1357 : 1964 Cri. L.J. 359

(vi) Where a witness is **neither** an accomplice nor anything analogous to an accompalice; he is an ordinary witness who was undoubtedly present at the time the incident took place. As a general rule a court may act on the

testimony of a single witness, though uncorroborated. It was further held that unless corroboration is insisted upon by statute, courts should not insist on corroboration except in cases where the nature of the testimony of the single witness itself requires as a rule of prudence, that corroboration should be insisted upon, and that the question whether corroboration of the testimony of a single witness was or was not necessary, must depend upon facts and circumstances of each case.

Note:– Appeal was dismissed.

Ramratan and others Vs The State of Rajasthan
A.I R. 1962 S.C. 424 : 1926 Cri. L.J. 473

(vii) Where the Witness named five assailants but the court gave benefit of doubt to two accused out of those (named) five.

Held:—It is no reason for disbelieving the testimony of witnesses.

Ramratan and others Vs The State of Rajasthan
A.J.R. 1962 S.C. 424 : 1962 Cri. L.J. 473

(viii) The phrase used in Art.20 (3) is "to be a witness" and not to "appear as a witness." It follows that the protection afforded to an accused is so for as it is related to the phrase "to be a witness" is not merely in respect of testimonial compulsion in the Court room but may well extend to compelled testimony previously obtained from him. It is available therefore, to a person against whom a formal accusation relating to the commission of an offence has been levelled which in the normal course may result in prosecution.

Note:—The appellant was tried under S.165-A of the Indian Penal Code for attemptıng to bribe Mr. Kaliyappan, Deputy Snperintendent of Police of Ramanathapuram. According to the prosecution, the appellant went to Mr. Kaliyappan's bungallow at about 7-15 a.m. who was at that time looking into certain papers He was informed that a visitor had come to see him. The appellant accordingly entered his office room when he again complained to to the Deputy Superintendent of Police against the village munsif. At the the same time he presented to this Police officer closed envelope. Mr. Kaliyappan thought that the envelope contains a petition but on opening it he found that it contained currency notes.

Held:—There was no formal accusation against the appellant relating to the commission of an offence, Mr. Kaliyappan had clearly stated that he was not doing any investigation. It does not appear from his evidence that he had even accused the appellant of having committed any offence. Even if it were to be assumed that the appellant was a person accused of an offence the circumstances do not establish that he was compelled to produce the money which he had on his person. No doubt he was asked to do so. It was, however, within his power to refuse to comply with Mr. Kaliyappan's

request. The facts established in the present case show that appellant was not compelled to produce the currency notes and therefore, do not attract the provisions of Art.20 (3) of the Constitution.

Note:—Appeal was dismissed.

Mohammed Destagir Vs The State of Madras
A.I R 1960 S C. 756 · 1960 Cri. L J. 1159

(ix) The non-production of Sucha Singh who is stated in the dying declaration and in the statement of Narvel Singh P W. 12 to have witnessed the occurrence was commented upon by counsel as a very serious omission. The Public Prosecutor stated at the trial that he was giving us Sucha Singh as he had been won over Therefore, if produced, Sucha Singh would have been no better than a suborned witness He was not a witness "essential to the unfolding of the narrative on which the prosecution was based" and if examined the result would have been confusion, because the prosecution would have automatically proceeded to discredit him by cross-examination No oblique reason for his non-production was alleged, least of all proved. There was therefore, no obligation on the part of the prosecution to examine this witness.

A.I.R. 1957 S.C. 904

(x) Material witness is a witess essential to the unfolding of the narrative on which the prosecution is based.

A.I.R. 1959 S.C. 484 : 1959 Cri. L.J. 537

(xi) Section 540 of the Code is intended to be wide as the repeated use of the word 'any' throughout its length clearly indicates. The section is in two parts. The first gives a discretionary power but the latter part is mandatory. As the section stands there is no limitation on the power of the court arising from the stage to which the trial may have reached, provided that the court is bonafide of the opinion that for the just decision of the case, the step must be taken. It is clear that the requirements of just decision of the case does not limit the action to something in the interest of the accused only. The action may equally benefit the prosecution.

Where the court exercises the power under the second part, the inquiry cannot be whether the accused has brought anything suddenly or unexpectedly but whether the court is right in thinking that the new evidence is needed by it for a just decision of the case. If the court has acted without the requirements of a just decision, the action is open to criticism bnt if the court's action is supportable as being in aid of a just decision, the action cannot be regarded as exceeding the jurisdiction.

Note:—The search was under direction of Dutta, Ranade admitted in cross-examination that he was told by Dutta that information had been received that Govani had secreted some contraband articles in his shop.

The prosecution **applied for the examination of Dutta** Inspector of Customs Bombay **as a court witness in the interest of justice.** The application was opposed by Govani. The Magistrate, however. ordered for the examination of Dutta under section 540 of the Code.

The main contention of the appellant accused was that the evidence of Dutta was improperly received by the Magistrate and should be excluded from consideration.

Held:—The court was right in thinking that a just decision of the case required that the nature of the belief under-lying the seizure should be before it on oath of the person making the seizure so that the Govani might be required as the policy of the Customs Act, 1962, requires to prove his innocent possession.So in these circumstances it cannot be said that the court exceeded its jurisdiction in acting under the second part of section 540 of the code of criminal procedure.

Note II:—So the appeal was rightly dismissed.

A.I.R 1968 Supreme Court 178 (V 55 C 45)
(from Bombay)

Witnesses (Court Witnesses)

(xii) S. 540 Cr.P.C, confers powers on the court to summon material witnesses at any stage of any inquiry or trial or other proceedings under the code The power is not to be confused with the power to tender pardon to an accused. The consideration for summoning witnesses as court witnesses are some what different from the consideration on which a tender of pardon should be made. It is not, therefore, possible to read section 540 with sections 337 and 338 of the Code or with section 8 (2) of the Criminal law Amendment Act.

A.I.R. 1968 Supreme Court 504 (April) (V 55 C. 122)

Women (accused)

When women folk (appellant) did not take a leading part in the occurrence but came into the field when their men folk came out. Partly to save their fields and partly to save their menfolk. Interference on the question of sentences passed against the women is called for. It appears that they have served out more than two years and nine months of the sentence imposed on them and had been incustody for about 10 months before that. On a consideration of all the circumstances of the case the sentence was reduced to already undergone.

A.I.R. 1964 S.C. 986

Women-Abduction

The law is quite clear on the subject of kidnapping. Before the charge can be successfully met the minor must be proved to have left the guardianship voluntarily and without any inducement or blandishment on the part of the person charged. If a minor abandons the guardianship with no intention of returning to it, any person who comes across the minor is not under a duty to return the minor but keeps the minor in his keeping. But, if a person either forcibly or by inducement makes the minor go outside the guardianship in which the minor is, the offence of kidnapping is established. In the present case there is nothing to show that on the evening when Mundrawati had gone to cut the crop in the company of Gange Devishe had abandoned the guardianship of her parents and did not intend to return to them.'The evidence of Murdrawati clearly establishes that she was practically forced to accompany Phullan and the present appellant. In these circumstances, it cannot be said that the appellant was not responsible for kidnapping. In fact Phullan and the appellant were directly responsible for taking away the girl from the guardianship of her parents The girl has been proved to be under 18 years of age and therefore, the offence under s.366, Indian Penal Code was completely brought home We see on reason to interfere-

Harbans Singh Vs State U.P.

Criminal Appeal No. 89 of 1965, decided on 30 11 1967. by M Hidayatullah S. M. Sikri and K S Hedge JJ ,

Note ·—See furthrer 'Abduction' at Page 3, Lawful Gaurdian ship at Page 284.

Won-over·

A judge commits an error of law in using the statement of a witness under section 164 Cr. P. C as substantive evidence in coming to the conclusion that he had been wonover

A.I.R 1960 S C. 490 : 1960 Crt. L.J 679

Words and phrases

(1) 'Line clear' does not mean that the lines in that station yard is clear for reception of the train but that there is no obstruction on the track beyond the outer most Signals on the down side of the station which the train has to enter.

A.I.R. 1956 S. C. 738 : 1956 Cri L J. 1392

See further:—Scope at page. 463

Work

A person who tunes, he can properly be said to operate upon it or manipulates for the purpose of receiving communication. Such a person works on the radio.

Mangal Sao Vs State of Bihar
A.I R. 1963 S.C. 445 : 1963 Cri. L.J. 338

Writs (England's Law)

The article 226 of the Constitution is couched in comprehensive phraseology and itexafacie confers a wide power on the High Courts to reach in justice whei ever it is found. The constitution designedly used a wide language in describing the nature of the power the purpose for which and the person or authority against whom it can be exercised. It can issue writ in the nature of prerogative writs as understood in England: but the scope of those writs also is widened by the use of the expresssion 'nature' for the said expression does not equate the writs that can be issued in India with those in England, but only draws an analogy from them. That apart, High Courts can also issue directions, order or writs other than the prerogative writs, It enables the High Courts to mould the reliefs to meet the peculiar and complicated requirements of this country. Any attempt to equate the scope of the power of the High Court under Art 226 of the constitution with that of the English Courts to issue prerogative writs is to introduce the unnecessary procedural restriction grown over the years in a comparatively small country like England with a unitary form of Government to a vast country like India functioning under a federal structure. Such a construction defeats the purpose of the article itself. To say this is to say that the High Courts can function arbitrarily under this Article. Some limitations are implicit in the article and others may be evolved to direct the article through defined channels.

Dwarka Nath Vs Income tax officer Special circle and another
A.I.R. 1966 S.C. 81

Writ of Certiorari

A writ of certiorari lies wherever a body of persons having legal authority to determine questions affecting the rights of subjects and having the duty to act judicially act in excess of their legal authority : it does not lie to remove or adjudicate upon the order which is of an administrative or ministerial nature.

Note:—A writ of Certiorari cannot be issued to the Administrative authority, the order which does not even bear upon it a judicial approach,

Sadhu Singh Vs The Delhi Administration
A.I R. 1966 S C. 91

Writing

A writing may be proved to be in the handwriting of a particular individual by the evidence of a person familiar with the handwriting of that individual or by the testimony of an expert competent to the comparison of hand writing on a scientific basis. A trial method (S.73 is comparison by the Court with writing made in the presence of the Court or admitted or proved to be writing of the person.

Where an expert's opinion is given, the court must see for itself and with the assistance of the expert come to its own conclusion whether it can safely be held that the two writings are by the same person. This is not to say that the Court must play the role of an expert but to say that the Court may accept the fact proved only when it has satisfied itself on its own observation that it is safe to accept the opinion whether of the expert or other witness.

Note:—The expert's evidence after comparing the writing by their Lordship's themselves was admitted.

Fakhuddin Vs The State of Madhya Pradesh
A.I.R. 1967 S.C. 1326 (Sept. Part) : 1967 Cri. L.J. 1197

Written statement

(i) The practice of filing written statement of the accused is to be deprecated but that is no ground for interference unless prejudice is established and it is nothing unusual for the accused to prefer filing written statement.

Tikeshwar Singh & others Vs The State of Bihar
A.I.R. 1956 S.C. 238 : 1956 Cri. L.J. 441

(ii) There is no provision of filing written statement in the criminal Court.

Sidheswar Ganguly Vs The State of West Bengal
A.I R. 1958 S.C. 143 : 1958 Cri. L.J. 273

(iii) If the written statement is filed after a long delay and contains pleas which can otherwise legitimately be regarded as matter of after-thought, that no doubt would affect the value of the pleas taken in the written statement. But it would not be possible to lay down a general rule that the written statement filed by an accused person should not receive the attention of the court because it is likely to have been influanced by legal advice. Such a distrust of legal advice would be entirely unjustified.

Harbhjan Singh Vs State of Punjab and another
A.I.R. 1966 S.C. 97 : 1966 Cri. L.J. 82

Wrongful confinement.

The words "only offence under the Indian Penal Code" cannot be read ejusdem generis with the offences such as theft, theft in building dishonest misap-

(Wr ongful confinement-contd)

propriation and cheating which are offences connected with property. This clause stands by itself and indicates that all offences punishable with not more than two years' imprisonment are also capable of being dealt with under S 5621-Aof Cr. Pc. offences against property are all included in Ch. 17 of the Indian Penal Code and if it was desired to limit the operation of S. 562 (1-A) to offences against property, it would have beea the casiest thing to have mentioned the seventeeth Chapter of the code. So the sentence of admonition U/s 561 (1-A) can be passed even in the offence of wrongful confinement i. e. 342 I. P. C.

Akarapu Katta Mallu and others Vs State of Andhra Pradesh
1967 S.C. 1363 (September Part). 1967 Cri L J. 1212

Wrongful gsin

(i) 'Wrongful gain' includes wrongful retention and 'wrongful loss' includes being kept out of the property as being wrongfully deprived of property. Therefore, when a particular thing has gone into the hands of a servant he will be guilty of misappropriating the thing in all circumstances which show a malicious intent to deprive the master of it.

Krishan Kumar Vs Union of India
A.I.R. 1959 S. C. 1390. 1959 Cri. L. J. 1508

Wrongful gain or wrongful loss

(ii) It is enough to establish the existence of one out of two wrongful loss or wrongful gain. The law does not require that for the purpose of cheating both should be established

A I.R. 1963 S C. 666. 1963 Cri L. J. 623

(iii) Public servant causing wrongful loss to government by benefiting third party commits an offence under S. 5 (1) d of tne Prevention of Corruption Act.

M. Narayanan Namkiar Vs The State of Kerala
A.I.R. 1963 S. C. 1116 1963 Cri L. J. 186